SUPPLEMENTAL
TRANSCRIPT OF RECORD

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CHARLES ELMORE CROPL
CLER

Supreme Court of the United States

October Term, 1943

No. 836 873

PACIFIC GAS AND ELECTRIC COMPANY, a Corporation,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

VOLUME VI

Pages 1779 to 1934

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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File No. 31-55

In the Matter of

PACIFIC GAS & ELECTRIC CORPORATION.

REPORT AND FINDINGS OF FACT BY THE TRIAL EXAMINER

1. A joint application was filed on November 29, 1935 by Pacific Gas & Electric Corporation (hereinafter referred to as applicant or P. G. & E.) and Great Western Power Company of California, (hereinafter referred to as Great Western), (a subsidiary of P. G. & E.), under Section 2(a) (8) of the Public Utility Holding Company Act of 1935, for an order declaring that neither P. G. & E. nor any of its subsidiaries are subsidiaries of The North American Company (a New Jersey corporation), (hereinafter referred to as North American), the owner of 17.71% of the voting securities of P. G. & E. The application alleged that (1) it was not controlled, directly or indirectly, by North American (either alone or pursuant to an arrangement or understanding with one or more persons) either through one or more intermediary persons or by any means or device whatsoever; (2) that it was not an intermediary company through which such control of another company was exercised, and (3) that its management or policies were not subject to a controlling influence, directly or indirectly, by North American (either alone or pursuant to an arrangement or understanding with one or more persons) so as to make it necessary or appropriate

in the public interest or for the protection of investors or consumers that it be subject to the obligations, duties and liabilities imposed by the Public Utility Holding Company Act of 1935 upon subsidiaries of registered holding companies.

Said application also alleged that Applicant owned all of the voting securities of Mt. Shasta Power Corporation, Sierra and San Francisco Power Company, Modesto Gas Company, and Midland Counties Public Service Corporation (hereinafter referred to as Midland); owned over 99% of the voting securities of Great Western, which owned all of the voting securities of Napa Valley Electric Company, Feather River Power Company and Great Western Power Company and two-thirds of the voting securities of California Electric Generating Company; owned over 89% of the voting securities of San Joaquin Light and Power Corporation (hereinafter referred to as San Joaquin); and owned 45.8% of the voting securities of Vallejo Electric Light and Power Company (hereinafter referred to as Vallejo), over which company, however, it denied the existence of control or a controlling influence; that each of the aforesaid corporations were public-utility companies organized under the laws of the State of California (where Applicant was and is domiciled) and carried on their operations wholly within that State; and that Applicant did not own in excess of 10% of the voting securities of any other public-utility company.

Said application further alleged that Applicant was and is predominantly a public-utility company

whose operations do not extend beyond the State of California. (Appl. Ex. 1)

2. On November 6th, 1940, Applicant filed an Amended and Supplemental application re-alleging the grounds for its application under Section 2(a)(8) of said Act[1] and further alleging that on

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(1) The appropriate portions of that section are as follows

"(8) 'Subsidiary company' of a specified holding company means—

(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies.

The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an

July 30, 1936, Mt. Shasta Power Corporation, Sierra and San Francisco Power Company, Modesto Gas Company, Great Western Power Company of California, Napa Valley Electric Company, Feather River Power Company, Great Western Power Company and California Electric Generating Company were dissolved, each of these companies having distributed its assets to Applicant; that on December 28, 1939, Midland was dissolved, having previous thereto distributed its assets to Applicant; and that San Joaquin had distributed all of its assets, except a sum of money held in reserve for distribution to certain minority stockholders whose rights had not been judicially determined, to Applicant and was in the process of dissolution. The allegations with respect to Vallejo Electric Light and Power Company were the same as in the original application (Appl. Ex. 2).

3. The application and amended application included a request for an order under Sections 3(a)

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arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies."

(1) and (2) exempting P. G. & E. and its subsidiaries from the provisions of the Act.

4. Since North American owns more than 10% of the outstanding voting securities of applicant, the latter is a subsidiary of North American by virtue of Section 2(a)(8)(A) of the Act. Failure to establish that any one of the three conditions, prescribed in Clauses (i), (ii) and (iii) of Section 2(a)(8)(B) exists, requires a denial of the applications.[2] Accordingly, Applicant must prove the allegations in its application (see findings 1 and 2) if it is to be entitled to the order it desires.

5. Pursuant to the provisions of the Public Utility Holding Company Act of 1935 and the rules and regulations of the Securities and Exchange Commission promulgated thereunder, an order of the Commission dated September 4, 1940, directed a hearing on these applications and an order of the Commission dated October 10, 1940, designated the undersigned, herein referred to as the Trial Examiner, as the officer to take evidence in these matters, and changed the date and place of the hearings. (Comm. Exs. 1-4 incl.) Public hearings were held pursuant to said orders in San Francisco, California, November 12-15, 18-20, 22, 25 and 26, 1940, and at the offices of the Commission in New

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(2) Cf. in re Northern Natural Gas Company, Holding Company Act Release No. 1618, and later cases under Section 2(a)(8). SEC. v. Sunbeam Gold Mines Co. 95 Fed. (2d) 699 at 701.

York City on January 15-16, 1941.[3] The record consists of 1,685 pages of testimony.[4] 48 exhibits were offered in evidence by the Applicant; 141 exhibits by counsel for the Commission and 4 exhibits by the California Railroad Commission in connection with a prepared statement (RR Comm. Ex. 1 of 22 pages), made a part of this record pursuant to the request of said Commission (3, 5, 7).

6. The Applicant was represented by Herman Phleger, Esq. of the firm of Brobeck, Phleger & Harrison, William B. Bosley, Esq., General Counsel of the Pacific Gas & Electric Corporation and Robert H. Gerdes, Esq., all of San Francisco, California. The Commission was represented by Esther M. Calkin, Esq. Ira H. Rowell, Esq., attorney for the California Railroad Commission, attended all the sessions of the hearing in San Francisco, although the California Railroad Commission did not ask permission to intervene (3, 10-1, 1417).

7. Edward P. E. Troy, a taxpayer of San Francisco for over 50 years and a consumer of Pacific Gas & Electric Corporation, appeared at all of the sessions of the hearing in San Francisco begin-

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(3) Notice of this hearing was given generally by Press Releases 2276 and 2325 (1935 Act) on September 5, 1940 and on October 14, 1940. (Comm. Exs. 3, 4) The Commission order was published in the Federal Register on September 6, 1940, Vol. 5, #174, p. 3587 (4).

(4) Figures in parentheses, unless otherwise indicated, refer to the pages in the transcript of testimony. These references do not exhaust the Testimony believed to support the findings.

ning November 13, 1940 (252) and, upon his reading into the record a Securities and Exchange Commission order of November 19, 1940 (Release 2392 (1935 Act) November 23, 1940), denying his request to be permitted to intervene, but permitting his participation to the extent of introducing evidence and cross-examining witnesses (1187-93), he was extended such privilege as the record will show (252, 1269, 1294-1375). He offered a P. G. & E. rate schedule for San Francisco as an exhibit.

8. Neither the filing of a trial examiner's report, the submission of proposed findings of fact by the Commission, requested findings of fact by counsel for the Commission, nor the right to file briefs and make oral argument before the Commission prior to the entry of findings and opinion of the Commission, has been waived by the Applicant. Counsel for the Applicant has moved that a trial examiner's report and findings be made and filed (9-10, 1415-6, 1683-4). The Commission has directed the Trial Examiner to file a trial examiner's report herein. Requested findings of 246 pages has been filed by counsel to the Commission, and requested findings of 64 pages has been filed by counsel for the Applicant.

THE APPLICANT

9. Applicant was incorporated under the laws of the State of California on October 10, 1905 (Appl. Ex. 14) by Messrs. E. J. DeSabla, Jr., John Martin, Frank G. Drum, G. W. McEnerney, John S. Drum, John A. Britton, Cyrus Pierce, Carl Tay-

lor, George K. Weeks, F. D. Stringham, Merrill O. Evans, Jr., Alexander N. Kemp, G. W. Lewis, C. R. Parker, and L. F. Young. All of these gentlemen except Mr. Taylor were then residents of San Francisco, Oakland, Berkeley or Alameda, California. This group included large stockholders of California Gas and Electric Corporation (a California corporation). The P. G. & E. was created for the purpose of bringing about a merger and consolidation of the properties and business of the California Gas & Electric Corporation with those of San Francisco Gas & Electric Corporation (a California corporation) (26). Others in the organizing group were or had been associated with N. W. Halsey & Co., an investment banking firm (130-4). The stock of these constituent companies was first acquired, their physical properties were then taken over in 1908 and 1910, and prior to January 1, 1912, the Applicant directly entered the public utility business. (Appl. Ex. 2, p. 20, Ex. 3) (26, 29-30)

CONSTITUENT COMPANIES

10. About 1884, Pacific Gas Improvement Company, a local corporation organized by the father of Mr. C. O. G. Miller, a director of Applicant, acquired the operating properties in San Francisco of United Gas Improvement Company of Philadelphia, a subsidiary of United Gas Improvement Company. In 1903, Pacific Gas Improvement Company was consolidated with San Francisco Gas and Electric Company (245, 517-20), which in 1906 be-

came a part of the P. G. & E. system. (Appl. Ex. 3)

11. In the early nineties, E. J. DeSabla, Jr., then interested in gold mining in Nevada County, California, and John Martin, Pacific Coast agent for the Stanley Electric Manufacturing Company, built a hydro-electric plant on the South Yuba River near Nevada City, California, and organized the Nevada County Electric Company.[5] A few years later Martin formed the Yuba Power Company and built a hydro-electric plant to supply electricity to Brown's Valley and Marysville, California. In 1900 they incorporated the Bay Counties Power Company to which was transferred the properties of the Yuba Electric Power Company[6] and Nevada County Electric Power Company. Bay Counties Power Company constructed a transmission line to Oakland and shortly thereafter Martin and DeSabla acquired control of Oakland Gas, Light & Heat Company and several small companies supplying electricity to limited areas in north central California. In 1901 the California Gas & Electric Company was organized as a successor to and acquired all of the Martin-DeSabla controlled companies (20-5, 31, 605). (Appl. Ex. 3)

12. In 1897, W. H. Crocker and associates organized the Standard Electric Company of California which initially supplied power to mines and towns in Amador and Calaveras Counties and later extended its lines to Stockton, Oakland and San

(5) Appl. Ex. 3 shows this as Nevada County Electric Power Company.

(6) Successor to Yuba Power Company.

Francisco. Between 1901 and 1905 Standard Electric Company of California, Sacramento Electric, Gas & Railway Company, and a number of other smaller companies merged with California Gas & Electric Company (24-6) (Appl. Ex. 3).

13. During the first twenty-five years of its existence Applicant acquired through mergers, consolidations and purchase numerous operating utility companies, subsequently transferring and consolidating the physical properties with its own (29-30). Today Applicant represents the consolidation of over 400 separate companies, some of which were in operation as early as 1850. (Appl. Ex. 3) (19, 21-30)

14. Messrs. Martin and DeSabla were the moving spirits in Applicant's affairs for several years after its organization although Mr. Frank Drum, its first president, and Mr. John A. Britton, its first General Manager, were the active officers during its early history, devoting all of their time to Applicant's development and operations (32-3, 128-30, 244, 525, 558, 606).

PHYSICAL PROPERTIES

15. Applicant is one of the largest public utility companies in the United States. Its balance sheet as of June 30, 1940, shows utility plant of $731,346,410 (Appl. Ex. 36f).[7] Its principal business is the production, purchase, transmission, distribution, and sale of electric energy and the purchase,

(7) See findings #28, 29.

transmission, distribution and sale of natural gas throughout a large part of Northern and Central California (Appl. Exs. 4, 7, 10). It also distributes and sells water to the public in a number of communities (62); produces and sells steam in parts of San Francisco and Oakland; operates a street railway and bus system in Sacramento; and, as an incident to its gas and electric business, sells some gas and electric appliances; all in California and not elsewhere. (Appl. Ex. 2, pp. 7-8) (98, 143) Applicant constitutes a unified system operating in territory which constitutes a geographic and economic unit and it has a highly diversified load permitting maximum use of facilities (68).

16. Applicant serves with electric energy 46 counties in Northern and Central California, including 137 incorporated cities and towns, 235 unincorporated communities and extensive rural areas, all contiguous territory. As of July 31, 1940, it served 911,035 customers with electricity (54-7, 754-6) (Appl. Ex. 33).

Applicant owns and operates forty-seven hydroelectric generating plants having a total capacity of 1,143,688 horsepower, (not including two Hat Creek plants of 33,512 horsepower, operated under leases), nine steam-electric generating plants having a total capacity of 575,905 horsepower, 6,138 miles of high voltage transmission lines, and approximately 33,306 miles of distribution lines with 485 substations. It purchases power from 9 nonaffiliated intrastate operating companies and secures what is commonly referred to as Hetch Hetchy

power on a consignment basis from the City of San Francisco (55-6).

All of the aforesaid electric plants, transmission lines and distribution lines are physically interconnected, are regulated and controlled from a central dispatching station in Oakland, and constitute a single unified public utility system operated as a unit (54, 64) (Appl. Ex. 7).

17. Applicant owns and operates an extensive gas transmission and distribution system in Northern and Central California. It sells and distributes gas in 101 incorporated cities and towns, 79 unincorporated communities, and adjacent rural areas. As of July 31, 1940, it served 636,394 customers with gas. (Appl. Exs. 7, 33)

More than ninety-six per cent of the gas customers are served with natural gas, all of which Applicant purchases in California from producers who produce the same in California (61).

Applicant owns fifteen gas generating plants. Six of these plants, having a total daily capacity of $3,372,000 cubic feet of gas, are situated in areas which are not connected with the natural gas transmission lines, and supply such areas with manufactured gas. The remaining nine plants, with a total daily capacity of 147,628,000 cubic feet are used as stand-by against interruption of natural gas service and to meet demands in excess of the capacity of the gas transmission lines (Appl. Ex. 2, pp. 6-7).

Applicant has 809 miles of gas transmission lines, and 7,630 miles of distribution line. Applicant's

gas system constitutes a unified system which is operated as a unit and is under the control of a single dispatcher (60, 64-5).

18. The territory served with gas is included in the general territory served with electric energy, and the great majority of gas customers are also customers for electric energy (62), thus permitting substantial economies in selling, servicing, meter reading, billing and collecting (71-2). These economies and other services are available to intermediate and contiguous rural areas served (57-8, 69, 78, 137).

19. All of the public utility properties of Applicant are located in California (98). Applicant does not purchase or sell any gas or electricity outside of California or at the state line (98, 143-4), and all gas sold or distributed by Applicant is produced in California. Thus it, and every subsidiary company thereof which is a public utility company, are predominantly intrastate in character, and carry on their business exclusively in California, in which they are organized (98, 144). (Appl. Exs. 4, 7, 10)

Applicant owns two electric transmission lines extending to Summit, California (located about 20 miles from the California-Nevada state line) which connect there with the transmission lines of Sierra Pacific Power Company, a public utility company operating in California and Nevada, with which Applicant has a contract for the sale of energy and for stand-by service (140). Applicant also owns two transmission lines which connect near Delta, California (located about 70 miles south of the

Oregon-California state line), with the transmission lines of The California Oregon Power Company, a public utility company operating in California and Oregon with which Applicant has a contract for the purchase at Delta of a maximum of 42,600 Kilowatts of electric energy at wholesale (141) (Appl. Ex. 2, pp. 8, 9). Applicant has no other contracts for the sale or purchase of gas or electric energy with companies operating outside California (141) (Appl. Exs. 4, 11).

20. Since prior to January 1, 1912, when it directly entered the public utility field as an operating company, the P. G. & E. has been predominantly an operating public utility corporation and its public utility operations have been at all times and now are confined to California (26, 29-30, 98, 143-4). It does not operate any portion of its electric and gas utility business through any public utility subsidiary, except the Vallejo Electric Light & Power Company (see findings #177-9).

21. Applicant claims that its electric residential rates as of October 8, 1940 were 46.1% of what they were on January 1, 1920, due to reductions in its electric rates during the years 1921, 1923, 1928, 1930, 1936, 1937, 1939 and 1940, totaling $23,408,900. Its gas residential rates as of October 22, 1940 were 46.3% of what they were on January 1, 1920, due to the introduction of natural gas with its higher heating value in 1930, which resulted in a saving to Applicant's customers of $8,173,000 and the gas rate reductions in 1936, 1938, 1939, and

1940, totaling $8,532,600 (73-5, 80-3, 137-8, 1325-34, 1347-72) (Appl. Ex. 8).[8]

FINANCIAL

22. Applicant's Gross Operating Revenues and Net Income before and after Federal Taxes, for the years beginning 1937 have been (Appl. Exs. 2, 36g):

Year	Gross Operating Revenues	Net Income	
		Before Federal Taxes	After Federal Taxes
1937	$100,443,115	28,628,418	24,910,747
1938	101,424,595	27,612,224	23,430,288
1939	107,175,352	30,417,653	25,678,151
1940 (first 6 mo.)	54,089,275	16,038,723	12,973,262

Approximately 70% of the gross operating revenues are from the electric department and 29% from the gas department.

23. The following tabulation reflects earnings per share and the dividends paid on Applicant's common stock the years ending December 31, 1920 to December 31, 1939, inclusive: (Appl. Exs. 24, 41) (214-23, 307-8, 1325)

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(8) The savings indicated represent the difference between the sums actually paid by consumers after a reduction and the sums such consumers would have paid for the same quantities under the old rates (73-5).

Year	Earnings Per Common Share	Dividends Paid
1920	$ 6.30	$5.00 cash
1921	8.34	5.00 "
		2.00 stock
1922	11.57	5.50 cash
		2.00 stock
1923	10.25	6.50 cash
1924	8.84	8.00 "
1925	9.53	8.00 "
1926	10.16	8.00 "
1927[9]	2.66	2.00 "
1928	3.05	2.00 "
1929	2.85	2.00 "
1930	2.62	2.00 "
1931	2.72	2.00 "
1932	2.09	2.00 "
1933	1.61*	1.75 "
1934	1.83*	1.50 "
1935	2.46*	1.50 "
1936	2.71*	1.62½"
1937	2.71	2.00 "
1938	2.48	2.00 "
1939	2.84	2.00 "

* These amounts were respectively 1.48, 1.52, 2.10 and 2.25 after provision for disputed gas revenues.

24. The following is a condensed profit and loss statement of Applicant on a consolidated basis for the periods indicated:

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(9) As of 12-31-26, the par value of all classes of Applicant's stock was reduced from $100 per share to $25 per share (325).

	1937	1938	1939	Jan. 1 to June 30, 1940
Gross Revenues	$100,443,116	101,424,595	107,175,353	54,089,276
Net Operating Revenue	40,404,495	39,602,947	42,849,416	21,820,180
Gross Income	40,752,252	39,811,961	43,169,385	21,932,439
Net Income Transferred to Surplus[10]	24,910,748	23,430,288	25,678,151	12,373,262

reduced from $100 per share to $25 per share (325).

(Exhibits to Amended and Supplemental Application—Appl. Exs. 2, 36 g, m)

25. The following is a condensed balance sheet of Applicant on a consolidated basis as of June 30, 1940 (Appl. Exs. 36f, m).

Assets	
Utility Plants and Properties	$731,346,410.06
Investment and Fund Accounts	67,765,290.81
Current and Accrued Assets	25,799,340.13
Deferred Debits	20,036,341.18
Capital Stock Discount and Expense	7,933,068.11
Reacquired Long Term Debt	394,000.00
Total	$853,274,450.29
Liabilities	
Capital Stocks	
Common	$169,973,925.00
Preferred	154,862,525.00
Total Capital Stocks	324,836,450.00
Premium on common capital stock	7,684,434.39
Bonds (incl. contra Reacquired Long Term Debt)	287,099,000.00
Advances from affiliated companies	27,652,994.03
Current and Accrued Liabilities	20,268,587.33
Deferred Credits	1,114,345.82

(10) After payment of fixed charges but before payment of any dividends.

Reserves	130,650,690.32
Contributions in aid of construction	170,466.65
Surplus	53,797,481.75
Total	$853,274,450.29

26. Applicant now has the following subsidiaries: (Appl. Exs. 2, 12, 13)

a. San Joaquin—Formerly an electric utility company, now in process of dissolution, 99.9% of the voting securities of which are owned by the Applicant (105, 263, 357-61) (see findings #60-2, 71, 74).

b. Vallejo Electric Light and Power Company—this company is an electric utility company (146-7, 149-52, 266) (see findings #178-80).

c. Valley Electrical Supply Company—An electrical equipment company with assets per books as of June 30, 1940 of $510,399, of which Applicant owns 95% of the voting securities (104, 264).

d. Arlington Properties Company, Ltd.—A real estate company with assets per books as of June 30, 1940 of $538,945 of which Applicant owns all of the voting securities (102, 264).

e. Crystal Lake Company, Ltd., whose principal business is the ownership of lands and water rights (102, 265). All of the capital stock of this company was acquired in January 1939 by Arlington Properties Company, Ltd. for $60,000.

f. Western Canal Company—An irrigation company with assets per books as of June 30, 1940 of $900,582, of which Applicant owns 86.1% of

the voting securities (104, 265) (Appl. Exs. 13, 36h, i).

Applicant and Standard Oil Company of California each own 50% of the voting securities of Standard Pacific Gas Line Incorporated (known as Stan-Pac), which owns and operates a natural gas pipe line from the Kettleman Hills oil and gas field in Kings County to San Pablo in Contra Costa County. It does not sell any gas. One-half of the capacity of this line is reserved for use by Applicant, the other half by Standard Oil Company of California and its subsidiaries. Stan-Pac's board consists of eight directors, Applicant and Standard Oil Company of California each nominating four members thereof. As of June 30, 1940 this company had book assets of $8,370,483 (Appl. Ex. 12) (103, 266).

All these companies are California corporations. They own no properties nor do they carry on any activities outside of that state (262-7, 949).

The only other securities issued by a public utility or holding company owned by Applicant are certain stocks, bonds, and debentures having a total cost of less than $25,000 which were among the assets of an acquired company (Appl. Ex. 13) (268).

CAPITAL STRUCTURE

27. At the time of the acquisition of the business and properties of acquired companies, the properties of several of such companies were subject to bond mortgages. As of December 31, 1930, the properties of Applicant were subject to 41 issues

of bonds, secured by 37 different bond mortgages. As of June 30, 1940, all of such bonds had been retired and the mortgages securing the same released, with the exception of the First and Refunding Mortgage of Applicant (490), the bonds outstanding thereunder, in the amount of $287,099,000,[11] and $9,032,000 (non-callable) Unifying and Refunding Series "B" 6% Bonds of San Joaquin (Appl. Exs. 38, 39), the payment of which has been assumed by Applicant (491-2).

28. Applicant has recorded all purchased properties on its books at cost to it, except in those instances when directed by the Railroad Commission of California to record acquisitions at the original cost to the company first devoting the properties to a public use; and has recorded the cost of all properties acquired in exchange for stock at the par value of the securities issued therefor (454, 465-6) (Appl. Exs. 46-8) (RR Comm. Ex. 1, pp. 11-5).[12]

29. For the year 1939 Applicant's provision for maintenance was 4.105% of its gross operating revenues and for depreciation 13.988% thereof, or a

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(11) It is stipulated that Applicant's bond indenture on file with the S.E.C. be considered a part of this record (512).

(12) Mr. E. W. Hodges, Comptroller of Applicant, testified that there had been no decreases or increases in the recorded costs of Applicant's physical or intangible assets resulting from a revaluation since 1917 when he became associated with Applicant (454, 465, 507) (RR Comm. Ex. 2, §52b). No securities have been issued in anticipation of excessive revenues from subsidiary companies nor has it shown any inter-company profits (474).

total appropriation for maintenance and depreciation of 18.092%.[13] (Appl. Exs. 34, 35)

30. Applicant's outstanding capital stock as of August 1, 1940 consisted of (Appl. Exs. 2, p. 15, Ex. 29) (492):

6,261,273 shares of common stock of the par value of $25 each,
4,197,659 shares 6% and
1,173,163 shares 5% cumulative preferred stock of the par value of $25 each.

The ownership of these shares is widely distributed.[14] All classes of Applicant's stock are listed on the San Francisco Stock Exchange and Los Angeles Stock Exchange; its common stock is also listed on the New York Stock Exchange (251) (Comm. Ex. 141).

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(13) Until 1919 the amount provided for depreciation was determined on the basis of the judgment of the management as to the amount necessary for that purpose. Subsequent thereto the same has been based upon the estimated life of the property. There has been no change in the policy with respect to provision for maintenance (469-70, 473, 507).

(14) The number of stockholders, resident in and out of California, the number of shares held by such stockholders, and their relative percentages was (App. Exs. 22, 29, 44):

SHARES OF STOCK

	Preferred	%	Common	%	Total	%
In California	3,842,183	71.5	1,725,349	27.6	5,567,532	47.9
OutsideCalif.	1,528,639	28.5	4,535,924	72.4	6,064,563	52.1
	5,370,822	100.0	6,261,273	100.0	11,632,095	100.0

(Footnote Continued on Next Page)

31. Applicant's capitalization for the periods indicated follows: (Appl. Exs. 40, 44) (495-6)

	12-31/19		12-31/29		12-31/39	
Bonds	87,002,406	55.44	207,024,200	50.60	287,345,000	45.64
Preferred Stock	30,049,580	19.15	86,104,682	21.04	134,270,625	21.32
Common Stock	34,004,054	21.67	95,555,313	23.36	156,570,125	24.87
Surplus	5,868,331	3.74	20,458,032	5.00	51,465,607	8.17
Total	156,924,375	100.00	409,142,227	100.00	629,651,357	100.00

32. Holders of common stock and holders of preferred stock have full and equal voting rights (324-8, 493). Each stockholder is entitled to one vote for each share held, and may cumulate his

(Footnote Continued from Preceding Page)
STOCKHOLDERS

	Preferred	%	Common	%	Total	%
In California	47,960	81.1	21,182	57.7	69,142	72.1
Outside Calif.	11,194	18.9	15,555	42.3	26,749	27.9
	59,152	100.0	36,737	100.0	95,891	100.0

58,472 shareholders, owning 4,705,948 shares, reside in the territory served by Applicant. (App. Ex. 29)

The following chart shows the distribution of Applicant's stock as to number of shares held (App. Ex. 21):

Stockholders Owning	5½% Preferred	6% Preferred	Common	Total	% of Holders
1-100 shares	14,924	33,626	31,367	79,917	83.4
101-500 shares	1,889	7,678	4,523	14,090	14.7
500-1000 shares	114	610	426	1,150	1.2
1001-5000 shares	52	260	270	582	.6
Over 5000 shares	9	32	56	97	.1
Total	16,988	42,206	36,642	95,836	100.0

(See findings #24, 38)

votes in elections of directors (324-8, 368). Stockholders' meetings are held annually, at which directors are elected to serve for one year and until their successors are elected or appointed (Appl. Exs. 27, 28) (369-70). A majority of the outstanding shares constitutes a quorum (Appl. Exs. 14, 27, p. 7, Ex. 28).

33. From 1914 to 1932 Applicant sold $76,000,000 par value of preferred stock directly to purchasers without underwriting. The average selling cost was 63-4/10c per $100 par value. Sales were made to 68,668 individuals, the average purchase being $1,100.00 (702-12). Since 1924 Applicant has sold more than $65,000,000 par value of its common stock in the same way (713-4, 1311-5) (Appl. Exs. 37a, b). Of these sales the greater portion have been to residents of Applicant's territory, most of whom are consumers (Appl. Exs. 29, 44), with resultant improvement in public and consumer relationships (718-20). (See fn 52 and finding #165)

APPLICANT'S ORGANIZATION

34. Applicant's office is at 245 Market Street, San Francisco. Here all meetings of the Directors, Executive Committee and stockholders are held. Here all books and records are kept. Applicant's office has always been in San Francisco, and it has never kept or maintained an office outside of California, nor held meetings of its Directors, Executive Committee or stockholders other than in San Francisco (2-4, 9, 347).

35. Applicant now has and for many years last

past has had a Board of Directors, consisting of 15 members. All directors must be stockholders. They are elected to serve for one year and until the election or appointment of their successors. (App. Exs. 14, 27, 28.)

The Board of Directors meets regularly once each month, and with the exception of Directors Fogarty and Freeman, who have never attended a meeting, the directors attend with great regularity (Appl. Exs. 19, 25). At such meetings all matters of importance affecting Applicant are discussed and decided. All Applicant's officers are appointed and subject to removal by the Board (226). No individual or group dominates the Board but there is free and full discussion in which each member expresses his individual view and each director votes in accordance with his own judgment, free of any control (113, 346, 525, 553, 607, 662, 676, 741, 852, 876, 939).[15]

36. The Executive Committee (Appl. Ex. 27) now consists of four Directors[16] and the President ex-officio, who presides at its meetings (285). The present members of the Executive Committee are

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(15) See findings 122, 123.

(16) During Guy C. Earl's incumbency there were five members on the Committee. Mr. Frank Anderson, then President of Bank of California National Association, served from the time the Committee was created until his death on September 17, 1935, with the exception of short periods when he was absent on vacations, on which occasions Mr. McIntosh served in his stead (523). The vacancy caused by Mr. Anderson's death was never filled (App. Ex. 17) (285).

President James B. Black (1068), and Directors C. O. G. Miller (since 1913) (522, 536), Allen L. Chickering (since 1930), Norman B. Livermore (since 1935), and S. H. Palmer (since 1938) (233, 284) (Appl. Ex. 17). The Committee meetings are also attended regularly by P. M. Downing, Vice President and General Manager; John P. Coghlan, Vice President and Assistant to the President; A. E. Wishon, Vice President and Assistant General Manager, and D. H. Foote, Vice President and Secretary-Treasurer, who participate in the discussions, furnish information to the Committee members, as well as give their opinions and advise on pending matters (Appl. Ex. 9). No individual or group dominates the Committee but there is free and full discussion in which each member and the officers in attendance participate (92, 113, 139, 286, 290, 291, 387, 553, 598, 599, 866, 876, 888, 1009, 1136). The members of the Executive Committee are nominated by the President and appointed by the affirmative vote of two thirds of the whole Board of Directors (84) (Appl. Ex. 27). The Executive Committee may, during intervals between sessions of the Board, exercise any of the powers and perform any of the functions and duties of the Board. The Committee meets weekly (Appl. Ex. 19) and acts between meetings of the Board of Directors; it formulates its views and recommendations with respect to the important issues, which are thereafter submitted to the Board of Directors (566, 736, 1135). It also discusses and disposes of many matters, including approval of all salaries in excess of

$300 per month (173, 194, 224, 230, 289, 290, 566, 736, 1135, 2511). There are few absences at meetings of the Executive Committee (Appl. Exs. 19, 25).[15]

37. The present Board of Directors, Executive Committee and principal executives, with their respective periods of service, attendance at meetings, and shares of stock held directly and by family and affiliated interests, are shown in the following table: (272-86) (Appl. Exs. 16-19, 25, 32)

Name and Company Position	Date of Elec. Present Incumbency as Director	Period Service With Co. and Pred. as of 9/30/40	% Meetings Attended (1/1/30-9/30/40 or Since Elec. if Elected After 1/1/30)		Stock Interests
			Directors	Ex. Comm.	
James B. Black President Director Member Ex. Comm.	6/18/30	28 yrs.	(since elec. to Pres.) 100%	94%	1,009 sh.
P. M. Downing Vice President Gen. Manager Director Attends Ex. Comm.	7/17/29	39 yrs.	94%	95%	4,651 sh.
John P. Coghlan Vice President Asst. to Pres. Director Attends Ex. Comm.	8/26/31[17]	34 yrs.	96%	93%	3,240 sh.
A. E. Wishon Vice President Asst. Gen. Mgr. Director Attends Ex. Comm.	10/27/36	31 yrs.	85%	85%	11,970 sh.
D. H. Foote Vice Pres. and Sec'y-Treas. (242) Director Attends Ex. Comm.	4/14/14[18]	37 yrs.	100%	98%	45 sh.
Allen L. Chickering Director Memb. Ex. Comm.	7/20/27		77%	81%	6,432 sh.
W. W. Crocker Director	10/6/37		66%		111,569 sh.
J. F. Fogarty[19] Director	12/18/35		No	One	2,059,670 owned by North American Co.

[17] First elected August 8, 1930.
[18] First elected June 29, 1909.
[19] See finding #101.

Name and Company Position	Date of Elec. Present Incumbency as Director	Period Service With Co. and Pred. as of 9/30/40	% Meetings Attended (1/1/30-9/30/40 or Since Elec. if Elected After 1/1/30)		Stock Interests
			Directors	Ex. Comm.	
Herbert C. Freeman[20] Director	12/16/36		None		2,059,670 owned by North American Co.
Norman B. Livermore Director Member Ex. Comm.	4/13/20[21]		92%	93%	91,581 sh.
Chas. K. McIntosh Director	12/18/35[22]		85%	97%[23]	125,933 sh.
John D. McKee Director	4/14/14		88%		61,049 sh.
C. O. G. Miller Director Member Ex. Comm.	4/9/12		81%	80%	212,855 sh.
Henery D. Nichols Director	3/9/38		90%		103,524 sh.
S. H. Palmer Director Member Ex. Comm.	10/27/36		85%	92%	139,950 sh.

[20] See finding #103.
[21] First elected April 11, 1916.
[22] First Elected February 10, 1926.
[23] While a former member of that Committee (Appl. E:. 17) (see fn 16).

38. All present Directors and principal officers, with the exception of Directors Fogarty and Freeman (who are officers of North American), are residents of San Francisco and vicinity; were either born in California or came to California early in life and have resided in California since that time; are prominently identified with California enterprises, and have no substantial interest in any eastern business or any corporation whose business is not principally conducted in California. During the entire period of Applicant's existence, the members of the Board of Directors, with few exceptions, have been residents of San Francisco and vicinity, and have and do own and represent substantial stock interests in Applicant (13, 242, 272-83, 514, 600-2, 653, 656, 671-3, 724-5, 767-73, 822, 826, 869-70, 889, 891-3, 908, 910, 948-51, 1420, 1587) (Appl. Exs. 16, 32).

39. Many of the present directors were connected with utilities which were merged with Applicant, or its predecessors, and the fathers of four directors (Directors C. O. G. Miller, Norman B. Livermore, A. E. Wishon and W. W. Crocker) were active in the affairs of predecessor companies (25-6, 232, 234, 245, 514-22, 654-5, 771, 952). All of the directors, with the exception of Directors Fogarty and Freeman, know each other well, some are associated together in other enterprises, and several have known each other from boyhood (541-3, 608-14, 659-61, 667, 674-5, 767, 773-5, 872-4, 896, 902-3, 916, 920-1) (Appl. Ex. 3).[24]

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(24) See findings #10-12.

40. The Directors, other than those who are active executives of the Company, and excepting Directors Fogarty and Freeman, are prominent in other business affairs in San Francisco and vicinity; two are Chairmen of the Boards of local banks, one is president of a third bank; all are directors of numerous corporations, including other utilities,[25] and several are officers or trustees of educational or charitable institutions (514-16, 601-2, 654-5, 658-9, 673-4, 768, 823, 869-70, 890-1, 909, 949, 1063).

41. Applicant has had but four presidents: Frank G. Drum served from its incorporation until July 28, 1920, when he resigned because of ill health;[26] W. E. Creed who succeeded Mr. Drum was elected on Drum's recommendation and served until his death, August 6, 1927;[27] A. F. Hockenbeamer, who succeeded Mr. Creed, was elected president on August 16, 1927 (153) and served until his death,

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(25) i.e. Pacific Lighting Co., predecessor of Standard Gas & Electric Co. a large stockholder of Applicant's shares (521), of which C. O. G. Miller is chairman of the board. (Appl. Ex. 20) (Petitioner's comment—this is in error. Pacific Lighting Company, of which C. O. G. Miller is president, is the holder of a large number of shares of Applicant, but it has no connection with Standard Gas & Electric Co.)

(26) Mr. Drum was a San Franciscan. He owned a substantial interest in California Gas & Electric Company and became a large stockholder of Applicant upon its organization. He also represented interests which were heavy investors in its securities (32, 153, 605).

(27) Mr. Creed was a San Francisco attorney.

November 11, 1935 (546)[28] being succeeded by James B. Black, the incumbent, elected November 20, 1935 (Appl. Exs. 16, 18, 32).[29]

42. Throughout its history, Applicant's operations have been under the immediate supervision of an officer designated as Vice President and General Manager. Mr. John A. Britton, President of California Gas & Electric Company when its properties were acquired by Applicant and for many years prior thereto associated with Oakland Gas, Light & Heat Company, occupied this position from the time Applicant commenced business until his death on June 29, 1923. He was succeeded by Mr. F. A. Leach, Jr., who resigned July 1, 1929. Since said date, Mr. P. M. Downing, an employee of the Applicant since its organization, has served as such officer (Appl. Exs. 16, 18, 32) (130).[30]

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(28) Mr. Hockenbeamer had been associated with N. W. Halsey & Co., investment bankers, when it participated in the organization of P. G. & E. He entered the employment of P. G. & E. in 1907 as Vice president, Treasurer and a Director, which positions he occupied until his death. He had no outside interests (33-4, 151, 154, 220-1).

(29) See findings #111-21.

(30) Mr. P. M. Downing came to California about 1878 and has been a resident of the state since; in 1895, after graduating from Stanford University with a degree in electrical engineering, he worked for Tacoma Light & Power Company and later for Market Street Railway Company; in 1897 he became an employee of Blue Lakes Water Company, which was afterwards absorbed by Standard Electric Company of California (13-14); he spent about a year doing construction work for John Mar-

43. Applicant maintains seven Committees in its organization, with membership and functions as follows:

President's Advisory Committee—meets weekly and considers Major questions that come before the management of the company (91, 456).

Engineering Committee—meets irregularly, but frequently—considers important technical matters dealing with the physical operations of the company (91).

Gas Engineering Committee—is similar to the foregoing committee, but it considers problems in the gas department (91).

Research Committee—considers suggestions made by employees relating to improved and more economical operations (91).

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tin & Company on properties which later became part of Applicant's system; in 1901 he managed Colusa Gas & Electric Company. He commenced to work for Applicant immediately after its incorporation and during his continuous employment he has been successively line construction foreman, supervisor of installation of sub-station and power house equipment, superintendent of sub-stations, engineer of operations, Vice President in charge of electric operations, Vice President in charge of electric construction and operation, and Vice President and General Manager and director. He was elected to his present positions in 1927 at the suggestion of Mr. Hockenbeamer. During this period of employment, Mr. Downing has devoted all of his time to Applicant's affairs, never having been interested in any other enterprises (15-16, 113).

For Applicant's personnel organization and chart see its Exs. 9, 16-19.

Appropriations Committee—reviews all estimates covering expenditures for new work or repairs (92, 140).

Employees Welfare Committee—meets about once a month and discusses matters affecting the welfare of Applicant's Employees (90).

Central Safety Committee—suggests ways and means of improving the safety of employees (90).

Mr. Black usually confers with the various committees in the process of formulating Applicant's policies (227).[31]

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(31) (Appl. Ex. 9).

Committee Members	President's Advisory Committee	Engineering Committee	Gas Engineering Committee	Research Committee	Appropriations Committee	Employees Welfare Committee	Central Safety Committee
President	x	xxx	xxx			xx	
Vice Pres. & Gen. Mgr.	xx	x	x			xx	
Vice Pres. & Ass't. to Pres.	xx					xx	xx
Vice Pres. & Asst. Gen. Mgr.	xx	xx	xx			xx	
Chief Engineer	xx	xx	xx	xx	xx	xx	
Vice Pres. and Exec. Eng.	xx	xx	xx	x	x		
Vice Pres. in Chg. of Pub. Rel. & Sales	xx	xx	xx	xx	xx	x	x
Comptroller	xx				xx		
Engineer of Elec. Op.		xx		xx	xx	xx	xx
Engineer of Gas. Op.			xx	xx	xx	xx	xx
Engineer of Gen. Con.		xx	xx			xx	xx
Chief of Div. Hydro-Elec. & Trans. Eng.		xx					
Chief of Div. Elec. Dis.		xx					
Chief of Div. Steam Engineering		xx					
Gen. Sup't. S. F. and East Bay Div.		xx	xx	xx			xx
Mgr. Personnel Dept.						xx	xx
Claims Adjuster						xx	xx
Pres. Pac. Serv. Empl. Ass'n.						xx	
Vice Pres. Pac. Serv. Empl. Ass'n.						xx	
7 Members Pac. Serv. Empl. Ass'n.						xx	

x—indicates Committee Chairmanship
xx—indicates Committee Membership
xxx—indicates Ex-Officio Membership

44. The office of Vice President and Assistant General Manager was created in July 1930 and has since been occupied by Mr. A. Emory Wishon (Appl. Exs. 18, 32) (951-4).[32]

45. Mr. J. P. Coghlan was appointed Assistant to the President on July 12, 1923, and was elected Vice President and Assistant to the President on August 16, 1927 (Appl. Exs. 18, 32) (824-6).[33]

46. Mr. W. G. Vincent, Jr., an employee of Applicant for twenty-eight years, has been Vice Presi-

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(32) Wishon has been a resident of California since 1889. He had become General Manager of the San Joaquin and Midland, after having served in various capacities from the dates of their organization until 1920 when he was made General Manager of both companies. In the Fall of 1925 when North American acquired control of the same, he was elected Vice President and continued as General Manager. He continued as operating head of the subsidiaries of Western Power Corporation until Applicant acquired control of them. Mr. Wishon was elected a Director of Applicant in 1936 (952-4). He severed all relations with and had no further communications with North American on the affairs of these subsidiaries (948, 954-6, 978, 1005). He continued as operating head of the San Joaquin and Midland but moved his office to Applicant's building. He is an officer and director of a number of California companies.

(33) Mr. John P. Coghlan was born in California and has been in Applicant's employ since 1906; at Mr. Hockenbeamer's suggestion, he was elected a a director on April 8, 1930, but resigned in June of that year to create a vacancy to be filled by a representative of North American; on August 26, 1931, he was reelected and has served continuously since that time (822-5).

dent and Executive Engineer since January 24, 1922 (Appl. Ex. 18).

47. Mr. R. E. Fisher, an employee of Applicant for twenty-nine years, has been Vice President in charge of Public Relations and Sales since July 12, 1923 (Appl. Ex. 18).

48. Mr. D. H. Foote has been Vice President, and Secretary since November 22, 1922. He was made Treasurer as well on August 16, 1927 (Appl. Exs. 18, 32) (242-4, 247-8).[34]

49. Mr. E. W. Hodges, an employee of Applicant for twenty-three years, has been Comptroller of Applicant since September 14, 1927 (Appl. Ex. 18) (455, 502).

50. Mr. W. G. B. Euler, an employee of Great Western Power Company of California for twenty years prior to 1930, became an employee of Applicant when it acquired control of Great Western and was appointed Chief Engineer of P. G. & E. on February 1, 1940 (238, 240) (Appl. Ex. 18).

51. Applicant maintains a full staff of officers and employees (95) (Appl. Ex. 27), fully competent to conduct its business in all its phases, including financing, purchasing (94, 1215-6, 1524-5), con-

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(34) Mr. D. H. Foote, has lived in the immediate vicinity of San Francisco for forty years. Prior to 1900 he was Secretary and Treasurer of the Union Trust Company of Philadelphia; in 1903 he entered the employ of California Gas & Electric Corporation; in 1906 he was elected Assistant Secretary of Applicant; the following year he became its Secretary; in 1909 he was elected to the Board; in 1910 was also made Assistant Treasurer; and in 1922 was also elected Vice President.

struction, engineering (95, 136), budgets (192-4, 229-30, 403-4, 574, 747, 1011, 1177-82, 1509-10, 1646), accounting (473, 504, 1174, 1208-10, 1218-9, 1520-2), rates (1070, 1207, 1520), taxes (504, 1207, 1520), valuation, insurance (1210, 1522), franchise (1212), preparation of registration statements, and otherwise, without outside assistance (84 et seq.) (Appl. Ex. 9), and during all times pertinent here, conducted its business without outside assistance, and no such advice or services have ever been furnished to it by North American, or its affiliates, or by Applicant to North American (116, 136, 868, 1209, 1219-20, 1521-2, 1527-30, 1688).[35]

52. There were no changes in operating and financial policies of P. G. & E. following its acquisition of Great Western, San Joaquin and Midland in 1930 (125, 473).

53. There have been no important changes in the organization of Applicant's personnel since the organization shown by Applicant's Exhibit 9 was set up during Mr. Creed's presidency (448).

PROXY MACHINERY

54. The solicitation of proxies is by Applicant's management. The proxy statement is prepared in the office of Applicant. It is customary for the president to designate as attorneys the persons who are the officers, the president, the secretary and the vice president and general manager (171, 235, 317, 320, 849-50, 1067). The nominees for election as

(35) See findings #122-125.

directors are the incumbent members of the board to succeed themselves. In the absence of changes, the procedure is followed by the staff without specific instruction from the president (382-6, 1125). If there is to be a new director, he is selected by the president with advice and approval of the other board members (317-20, 367, 565, 635, 667-8, 734-5, 791, 798, 898, 936-7, 1003, 1124-7, 1477-8, 1604, 1616-8) (Appl. Ex. 26). Nominees for election as representatives of North American have been designated by it. (Comm. Exs. 59-70) (1078, 1126, 1133)

CONSTITUENTS OF WESTERN POWER CORPORATION

55. On March 29, 1930, North American, a New Jersey corporation, was the owner of a majority of the capital stock of Western Power Corporation, having acquired such stock by exchange in the fall of 1925 (964, 1023-4, 1464-70, 1092) (Comm. Ex. 57).

56. Western Power Corporation, a New York corporation, on March 29, 1930, was the owner of a majority of the capital stock of——

> Great Western Power Corporation of California and San Joaquin Light and Power Corporation,

and all of the capital stock of—

> Midland Counties Public Service Corporation (958-63, 989, 991, 1021-2).

These three were all California corporations (1087-90) (Comm. Ex. 54-56) (Appl. Ex. 6).

57. Western Power Corporation had been the owner of said stock of Great Western for many years, and had acquired said stock of San Joaquin and of Midland in the spring of 1925 (954, 960, 989) (Comm. Exs. 31-35).

58. In the early 1900's eastern interests and Mr. E. T. Earl and Mr. Guy C. Earl, Californians, organized an operating utility company under the laws of California which later became Great Western and made it a subsidiary of a corporation organized under the laws of the State of New York, which in 1925 was the Western Power Corporation (1087-9).

59. In 1908 the predecessor of Great Western completed construction of a hydro plant on the Feather River (38). Applicant became its largest customer. Because it could not use all of the output, Great Western began to acquire several small distribution systems in competition with Applicant. At this time there was no State law requiring a certificate of convenience and necessity, so parallel lines, duplicating facilities and other means were used by each competitor to obtain new business in the San Francisco Bay region and in the Central valley of California (38-40, 373, 531, 617, 1032, 1088-90) (Comm. Ex. 42). By March 29, 1930, competitive conditions[36] were such that both com-

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(36) 90% of the gross revenue of Great Western was from territory in which it was in active competition with Applicant (38, 40-2, 617, 974, 1000, 1032-4) (Appl. Ex. 4) (Comm. Exs. 42, 43 pp. 3-4, Ex. 44 p. 1).

panies and the general public recognized the inefficiency and lack of economy resulting therefrom (38-40) (RR Comm. Ex. 1, pp. 20-1).

60. San Joaquin on March 29, 1930, was a public utility company operating in the San Joaquin Valley in California, generating, distributing and selling electric energy in that area (Appl. Ex. 4). The properties of San Joaquin represented a merger and consolidation of a number of public utility properties, one of which had started operations in 1895 (Appl. Ex. 3), together with later construction (954-6, 989). The Midland Company was a similar utility operating principally along the coast from San Luis Obispo to Lompoc (44) (Appl. Ex. 4). Its stock was owned and controlled by the principal stockholders of San Joaquin (954-8, 989).

61. The San Joaquin and Midland were not in competition with Applicant (Appl. Ex. 4) (49), but their operating territory was contiguous to that of Applicant and susceptible of economic tie-ins. A large portion of Applicant's natural gas was produced in the territory served by San Joaquin and Applicant distributed gas in the City of Fresno, in which the former company distributed electrical energy (49-51, 984).

62. After the acquisition of control of San Joaquin by Western Power Corporation in 1925, the San Joaquin and Great Western cooperated in matters of mutual interest. Almost immediately a tie line was built, connecting both companies, thus making available the productive resources of both com-

panies, which resulted in great economies as most of the San Joaquin plants were stream flow plants while those of Great Western had large storage above them (961-3, 1022-3).

NEGOTIATIONS OF P. G. & E. FOR ACQUISITION

63. The acquisition by Applicant of the properties of Great Western had been the subject of discussion as far back as 1906 (45-7, 157, 531, 533, 615). However, approaches which had been made over the years had not resulted in a purchase (Comm. Ex. 44).[37]

64. When Mr. Hockenbeamer became president of P. G. & E. and after North American had acquired control of Western Power Corporation and its subsidiaries, Applicant, by its president, again in the Fall of 1929 initiated negotiations for the purpose of acquiring the properties of the subsidiaries of Western Power (45-7, 121, 531-3, 1114, 1467). In these negotiations North American was represented by a vice president, James B. Black (534), who kept the executive officers of North American constantly advised of the progress (158, 371-2, 533, 559, 1033-5, 1108, 1442-5, 1470) (Comm. Exs. 36-9, 42, 43).[38] Black and Hockenbeamer

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(37) According to Mr. Miller, Applicant had always been desirous of acquiring these properties, the only question was whether it could do so at a proper price (531-3).

(38) Mr. Frank L. Dame, then President of North American, told Mr. Black that he was loathe

started negotiations in September 1929 (Comm. Ex. 36). The negotiations continued for a number of months (Comm. Exs. 40, 41)—Applicant's Executive Committee and its directors being constantly advised of the progress being made (122, 156-8, 371-2, 533-5, 559-60, 681, 731, 776, 786) (Comm. Ex. 50). The introduction of natural gas by Applicant by this time was a factor in deciding North American to make the sale, as it gave Applicant a competitive weapon of which North American was apprehensive (1033-4) (Comm. Exs. 42, 44). Finally, the agreement of March 29, 1940, hereinafter referred to, was made (1027-31) (Comm. Exs. 36-53).[39]

65. The arms length (1114) negotiations did not

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to sell the properties because they had a good future and because he feared that a sale might lead others to believe that they had been acquired merely for trading purposes rather than in accord with the policy of North American of buying properties for development into large economic units (1468). He said, however, that the existent competitive conditions might justify a sale and therefore Mr. Black should go to California to see Mr. Hockenbeamer.

(39) Mr. Fogarty testified that North American caused Western Power Corporation to dispose of its subsidiaries because Applicant was a stronger company with a better credit position. "It seemed to us that the acquisition by Pacific Gas and Electric Company . . . would provide the advantages that would result in elimination of competition and would enhance the possibilities of developing that part of what would be the Pacific Gas and Electric Company's system; and for that reason would be generally in the interest of the public and the companies themselves" (1469).

involve consideration of any proposal other than the exchange of P. G. & E. shares for the shares of the subsidiaries of Western Power Corporation (533, 681-2). North American desired not cash, which would necessitate investment, but such shares as would provide it with an income comparable to the earnings from the subsidiaries, the shares of which were to be acquired by P. G. & E. (1051-3, 1469-70) (Comm. Exs. 37-39, 41, 42, 44, 45, 46, 48). North American was also mindful of a possible income tax liability if it was a cash deal (1469) (Comm. Ex. 43 p. 2).[40]

66. In the course of the negotiations for the purchase by Applicant of North American's California subsidiaries, it was recognized that if the

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(40) Mr. Chickering testified that Mr. Hockenbeamer, being anxious to acquire the properties, was willing to make the deal on the basis of 2,000,000 shares but that he and Mr. Anderson did some calculating and recommended a trade on the basis of 1,700,000 shares after which Mr. Miller suggested an additional 100,000 shares and an offer of 1,800,000 shares was authorized. This difference of opinion temporarily split the Executive Committee for Mr. Elsey and Mr. Hockenbeamer didn't think the deal could be made for 1,800,000 shares, but Messrs. Chickering, Miller and Anderson would not consent to the acquisition at more than they thought was a proper price. Later it was agreed to raise the offer to 1,825,000 shares (533, 681-2, 1052-3). (See Finding #65) Prior to this deal, North American had owned none of Applicant's shares (Appl. Ex. 2 p. 23). These shares, constituting 17.71% of the voting stock, where the ownership of the remainder is widely diffused might constitute control. See Equity Corp. 2 S.E.C. 675. (See Findings #105-108).

proposed transaction was made, North American would become a large stockholder of Applicant (Comm. Ex. 43 p. 6). Applicant's president stated to North American representatives that neither he nor Applicant's directors would agree to any transaction which would jeopardize the control of Applicant by local directors who had developed Applicant's properties over the past 75 or 80 years, but that he had satisfied himself that the transactions would not jeopardize that control (1038). It was realized by North American that if it made the sale, it would be giving up control of its California subsidiaries, but that North American would be in the position merely of an investor (1038, 1106-8, 1443-4, 1608, 1672).

67. North American, through its representative only, gave assurance to Hockenbeamer that it did not desire to acquire control of Applicant, and would not attempt to interfere with the management or policies of Applicant, but would consider itself merely as an investor (537, 630, 682-3, 789, 1037-9, 1106-8, 1443-4, 1608, 1672). This was reported to Applicant's directors. It was only after Mr. Hockenbeamer had advised Applicant's Executive Committee and its Board of Directors of these assurances by North American, that the purchase was authorized, and it would not have been authorized unless such assurances had been given (123-5, 159, 376, 535-8, 560, 597, 615-6, 630, 682-3, 729-31, 777, 787-9, 845, 919, 933-4, 1102-6) (Appl. Exs. 43a, b).

68. In the course of the discussions and prior to the execution of the agreement of March 29, 1930 (Appl. Ex. 6) it was agreed by Mr. Hockenbeamer for Applicant and James B. Black of North American that it would be accorded representation by the election of three persons named by it, as directors, and by one member of the Executive Committee (161-2, 170, 563, 631, 732, 847, 1036, 1102, 1471, 1643) (Appl. Exs. 43A, B). Three directors were agreed upon. This is the number North American would be able to elect by cumulating and voting the shares which it owns.[41] This arrangement was reported to Applicant's board of directors (165, 563, 631, 732, 847). This understanding was not incorporated in the written agreement. (Comm. Ex. 42 p. 4; Ex. 43 p. 5; Ex. 44)

SALE TO P. G. & E.

69. The negotiations culminated in an agreement dated March 29, 1930, between North American and Applicant (Appl. Ex. 6) whereby North American contracted to cause Western Power to sell and deliver to Applicant the following:

300,000 shares of common stock of Great Western
897 shares of prior preferred stock of San Joaquin

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(41) This arrangement would assure the receipt by North American of reports and data available to directors and members of the Executive Committee, and would thereby enable it to express itself on Applicant's General policies (1037, 1079-80). (See Findings #94, 106-8, and fn. 71).

1,462 shares of prior preferred Series A stock of San Joaquin
45,159 shares of preferred Series A stock of San Joaquin
128,867 shares of common stock of San Joaquin
5 shares of preferred stock of Midland
10,000 shares of common stock of Midland
1 share of preferred stock of California Electric Generating Company

and, in addition, to cause Western Power Corporation to cancel the total indebtedness of Great Western, San Joaquin and Midland to it as of January 31, 1930, amounting to $19,180,776.76 (Comm. Ex. 48) in consideration of Applicant issuing and delivering to North American, 1,825,000 full paid shares of common stock of Applicant.[40]

70. After a public hearing (on Application #16,415), the Railroad Commission of the State of California (hereinafter called the Railroad Commision) on May 14, 1930, rendered its decision #22,432 (Appl. Exs. 5, 6), authorizing Applicant to acquire said shares of stock and to issue its own shares in payment therefor, as called for by said agreement of March 29, 1930. Pursuant to said decision, the transactions thereby authorized and provided for in said agreement were consummated on or about June 12, 1930.

THE CONSOLIDATION

71. Applicant's acquisition of the stocks purchased under said agreement was the first steps in the execution of applicant's plan to acquire, and to consolidate with its own, the business and prop-

erties of San Joaquin, Midland, and Great Western, and the subsidiaries of the latter company (hereinafter called the acquired companies), such plan being disclosed in its application to the Railroad Commission, which resulted in said Decision #22,432, approving the same (Appl. Ex. 2, p. 22; Exs. 5, 6) (Railroad Commission Ex. 1, pp. 19-20).

72. Immediately upon the acquisition of said stocks as aforesaid, applicant acquired additional shares of Great Western and San Joaquin and then commenced the work of consolidating the business, personnel, and properties of said acquired companies, to make them an integral part of applicant, and to realize the economies and other advantages resulting therefrom. The offices of the acquired companies were moved to 245 Market Street, San Francisco, applicant's main office, duties of personnel were consolidated where possible, unnecessary personnel was eliminated, the operations of the properties were synchronized, and in every way possible the business and properties of the acquired companies were incorporated into and made a part of applicant, and of its unified operations (48-9, 975, 986, 996) (Comm. Ex. 29, 30).

73. All of this was done by applicant, acting through Paul M. Downing, its Vice President and General Manager, without participation of North American or its subsidiaries in any decision with respect to personnel or otherwise (48-9, 236, 975, 996, 1036). Concurrently all indebtedness, contracts, procedures, arrangements and relationships previously existing between said acquired companies

and North American and its subsidiaries were cancelled and terminated (203, 973, 1287, 1522, 1599, 1666-7),[42] and all North American representatives on the Boards of the acquired companies resigned (1111, 1116) (Appl. Ex. 6, p. 4) (Comm. Exs. 45, 47) so that thereafter the only connection North American had with applicant was that of stockholder (978, 1522, 1643).

74. In further consummation of said plan and pursuant to decisions and orders of the Railroad Commission (Decision #28517 made January 20, 1936, Appl. Ex. 46), as to Great Western and subsidiaries (Decision #31354 dated October 13, 1938, Appl. Ex. 47), as to San Joaquin, and (Decision #31355, dated October 13, 1938, Appl. Ex. 48) as to Midland, Applicant acquired all of the assets of said companies, assumed all the debts, and the companies have since been dissolved, with the exception of San Joaquin, its dissolution being delayed pending determination of the rights of the holders of a small amount of stock (111, 357-9, 949).

75. The acquisition of Great Western, San Joaquin and Midland by applicant rounded out a fully integrated system serving a single geographic and economic area, consisting of the San Francisco Bay area, with the great central valleys tributary thereto and the adjoining coastal areas (1041); it removed the hazards of competition, improved applicant's credit, and constituted a single system economically operated (373, 975, 983-6, 1094).

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(42) (See Findings 77-82.)

76. Subsequent to the 1930 transaction Western Power Corporation's only investment was its holdings of applicant's common stock which upon its dissolution on May 2, 1936 were transferred to North American (1117-18, 1465-1471) (Comm. Exs. 56, 57 and 58).[43] From June 1930 to its dissolution, all of its directors were persons associated with North American with the exception of Mr. H. P. Wilson who with his associates originally controlled Western Power Corporation (Comm. Ex. 57).

NORTH AMERICAN RELATIONSHIP TO ITS SUBSIDIARIES

77. In 1927, after the acquisition of control of Western Power Corporation by North American, and prior to the sale in 1930 to P. G. & E., the Great Western, San Joaquin and Midland companies were placed under a single management (964) subject to the supervision and control of North American (966-9, 992-4, 1022-27, 1434-9) in the same manner as were its other subsidiaries (1439, 1593-99). Great Western and San Joaquin paid North American for such supervision the following sums (973):

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(43) A few shares were distributed to minority shareholders of Western Power. Some additional shares were acquired in 1931 in the exercise of its right to subscribe to a portion of an offering of shares by P. G. & E. (333-5, 486). The issue of other shares by P. G. & E. in exchange with its subsidiaries has reduced the relative holdings of North American (486-9) (Appl. Ex. 30).

		Great Western	San Joaquin and Midland
	1927	$19,394.31	$16,898.00
	1928	26,039.50	24,573.55
	1929	28,192.39	26,624.52
Jan. 1—May 31	1930	17,270.77	16,540.82

78. Such supervision included the following subjects (966-9, 1437-9, 1522, 1996, et seq.):

Construction budgets, automobile operating costs, all operating budgets and estimates (1436-7),[44] cash balance sheets, cash requirements, current rate base report, rate matters (1207, 1520), new business reports, financial and operating reports, personnel reports, repurchase stock reports, standardized statistical reports, tie-line accounts, condensed income and balance sheets, precipitation reports, output report showing the trend, the load and the business, general manager's letter. In addition, it supervised the correspondence of and regularly inspected the properties of its subsidiaries (965-9, 1027, 1434). All financing was arranged by North American in New York (1230, 1435, 1532-4, 1655-7), which also made large cash advances to its California subsidiaries, such advances aggregating over $19,000,000 at the time of their sales to applicant (970, 1434-40).

79. Great Western and San Joaquin also had representatives on committees of subsidiaries of North American including the Rate Committee, New Business Committee, Engineering Committee

(44) North American after approval of these budgets, follows and checks the expenditures thereunder (1510).

(1439), and statistical and comparative information was exchanged with such subsidiaries (970-1). They also were accorded the privileges and benefits of a group purchasing contract arranged by North American for all its subsidiaries (1215-6, 1438, 1524-5), received advice on secretarial (1527), accounting (1521), and tax matters and North American supervision of the preparation of the annual reports (1436-40, 1593-1600), and Registration Statements (1654, 1666-7).

80. The officers of North American have been connected by private wire to those of most of its admitted subsidiaries—this wire never extended to the West Coast (1213).

81. Subsequent to 1935 and until rather recently there were 12 or 14 persons employed by certain subsidiaries of North American occupying offices located on the 18th floor of its building in New York City, which persons performed certain services for their employers (1220-2, 1527-30).

82. North American maintains a Station Advisory Committee composed of engineers employed by its admitted subsidiaries, which meets frequently to discuss and exchange technical engineering information (126, 1214-5, 1439, 1523). Applicant has never had any representation on, nor have any of its employees attended meetings of this committee.[45]

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(45) None of these relationships (Findings 78-82) exists between Applicant and North American (1066-8) (see too Findings 122-143).

P. G. & E. RELATIONS WITH NORTH AMERICAN

83. Pursuant to the oral agreement which was made prior to the agreement of March 29, 1930,[46] James B. Black, a vice president of North American, Guy C. Earl, former President of Great Western, and Edward Gruhl, of North American, were elected directors on June 18, 1930, at the request of North American (539-40, 1040). At the same time Mr. Black was elected a member of the Executive Committee, but was succeeded by Mr. Guy C. Earl on July 9, 1930, who served until his death on June 25, 1935. Mr. Black, during the period from the sale in 1930, until his election as president of Applicant in 1935, attended but four meetings of the Board of Directors of Applicant.[47]

84. North American has been represented on Applicant's Board by the following persons who served for the indicated periods (1423-4) (Appl. Ex. 16) (Comm. Exs. 59-70):

Edwin Gruhl—elected June 18, 1930, died January 22, 1933;

James B. Black—elected June 18, 1930 and served as a representative of North American until his election as President on November 20, 1935;

Guy C. Earl—elected June 18, 1930, died June 25, 1935;

F. L. Dame—elected February 15, 1933, died December 30, 1933;

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(46) See Finding #68.

(47) See Findings #37, 54, 67, 114.

F. W. Doolittle—elected January 17, 1934; resigned November 23, 1936;
Herbert C. Freeman—elected December 16, 1936;
James F. Fogarty—elected December 18, 1935.

85. Mr. Earl also represented North American on Applicant's executive committee from July 9, 1930 to June 25, 1935 (Appl. Ex. 17).[48]

86. Mr. Earl took notes of the proceedings of the Board of Directors and of the Executive Committee, and forwarded them to North American (179, 1136, 1482-4). At his request he was furnished copies of the minutes of the Executive Committee meetings, but not of the Board meetings, which, together with reports available to both (1047) he sent to North American (353, 421). He was in receipt of a salary of $12,000 per annum (1041) from North American, in part for this service but largely in recognition of his long past service as an officer of Great Western (1446-7). While he was a regular attendant at meetings (Appl. Ex. 19) he never expressed any views regarding North American attitude on pending matters (117, 235, 529, 568-70, 609-10, 678-9, 776, 830, 918, 1005, 1048).

87. When Mr. Earl died on June 25, 1935, his place as a director and member of the Executive Committee was not filled by a representative of

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(48) Earl was President of Great Western Power Company of California in 1925 when control of that company was acquired by North American (1005) and was President of Western Power Corporation when Applicant acquired control of its subsidiaries (1445).

North American. No suitable person was suggested and North American did not believe any useful purpose would be served by naming a person who would not be in a position to attend Exexutive Committee meetings (1055, 1123, 1573, 1612). Furthermore, it had been arranged that copies of the minutes and the reports submitted to the Executive Committee would be sent to the Directors named by North American[49]—hence they would be as well informed as if a representative were present (167, 365, 419-22, 732, 1039-40, 1055, 1134, 1137, 1459, 1474-5, 1483, 1488, 1574, 1613, 1622) (Comm. Exs. 5, 8, 11, 15). North American's decision not to ask that Mr. Earl be succeeded by a North American representative was made prior to Mr. Black's election as president and was not due in any way to Mr. Black's election (1123-4, 1476, 1488, 1615, 1622) (Appl. Exs. 16, 18). Since that time North American has had only two representatives on the Board (1123, 1474).

88. Mr. Gruhl (who attended only one meeting in June 1930) was succeeded in turn by F. L. Dame (who attended no meetings) (1123, 1474), F. W. Doolittle (who attended only one meeting, September 21, 1936), and Herbert C. Freeman, presently a director (he has attended no meetings) (1610), in the order named (Appl. Exs. 16, 19). All were officers of North American. After Mr. Black had severed his connections with North American, upon becoming President of Applicant

(49) See Finding #94.

(November 20, 1935), Mr. J. F. Fogarty, President of North American, was on December 18, 1935, elected a director to represent North American on the P. G. & E. board. He has never attended a Directors' meeting (Appl. Ex. 17) (1421). The Directors who have been elected or appointed since Mr. Black became president, other than the representatives of North American, were selected by him without consultation with or advice from North American or its representatives (872, 893, 914, 916, 1479-81, 1592, 1617).

89. None of the persons who were named as Directors or as a member of the Executive Committee at the instance of North American, ever attempted to influence or control the action of Applicant or its Board of Directors or Executive Committee, or ever expressed the view of North American with respect to any pending matter, with the single exception that in September 1933, after the Board of Directors of Applicant had reduced the current dividend rate on common stock of Applicant from 8% per annum to 6%, officers of North American who desired that the current dividend rate be maintained, requested that the action of Applicant's Board of Directors in reducing the dividend be reconsidered, but no such action was taken by the Board of Directors (1045-7, 1448, 1479-80).[50]

90. After Applicant acquired control of the subsidiaries of Western Power Corporation, neither Mr. Downing nor Mr. Wishon reported to repre-

(50) See findings 98, 144, 145.

sentatives of North American concerning the operations of those companies and they had no contacts with them relating to such operations (117). Mr. Earl occasionally asked some member of the North American organization to make a special analysis of certain reports, and sometimes inquired of Hockenbeamer and Wishon about certain things in the reports which were not clear (1005, 1148).

91. At present and in the past, the communications and contacts between North American and its officers and Applicant and its officers have been infrequent and unimportant (113-5, 137, 176-7, 180-1, 189, 504, 573, 641, 669, 677, 745, 828-30, 844, 884, 900, 940, 980-1, 1008, 1011, 1058, 1143, 1147-9, 1159, 1167-8, 1173, 1292, 1453, 1495, 1621, 1625-9, 1638, 1642-3) (Comm. Exs. 6-30, 59-127, 138-40). Occasional calls by officers, at which only general matters were discussed, have taken place from two to several times a year (1496, 1571). Letters have been infrequent (750, 818-9, 857, 978-9, 1601, 1629, 1639) (Comm. Exs. 8, 29, 30) and telephone conversations have been limited to from two to nine calls both ways each year (1146, 1454, 1627). Mr. Black, while a vice president of North American, talked to Mr. Hockenbeamer, president of P. G. & E. several times. Once in 1930 when he made suggestions regarding personnel of the acquired companies (1044) (Comm. Ex 30). Wishon also wrote Gruhl of North American on this subject in April 1930 (978-9) (Comm. Exs. 29, 30). In 1935 Black discussed with Hockenbeamer the relative strength and desirability of including certain underwriting groups in the syndicate the latter was forming

(1247-54) (Comm. Ex. 133).[51] Several times during that year Mr. Hockenbeamer called him and he gave his opinion as to the likely course of the bond market and the prices that P. G. & E. ought to get for its bonds (1045-9, 1072-5, 1244).[52]

92. The relationship between Applicant and North American has not altered since that established in connection with the 1930 transaction (1223, 1530).[53]

93. There was no change in the relationships between Applicant and North American at the time of or in anticipation of the enactment of the Public Utility Holding Company Act of 1935 (1531, 1675).

94. The officers of North American who are directors of Applicant receive periodical reports from Applicant, such reports being in substance the same that have been received pursuant to and since the 1930 sale (Appl. Exs. 5, 33, 45) (Comm. Ex. 108) (352-4, 402, 420-3, 451, 506, 574, 746, 797, 808-20,

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(51) See Finding 154.

(52) As early as June 1914, Hockenbeamer had initiated a successful program for the sale of Applicant's preferred stock to its customers. He was generally recognized as the creator of customer-ownership plan subsequently adopted by other utility companies (702-10, 1541). From 1907 until his death, Mr. Hockenbeamer was primarily responsible for the formulation and execution of Applicant's financial policies and was considered well versed in utility financing. As President he devoted most of his time to matters peraining thereto as distinguished from the operating problems (156, 220-1, 433, 559, 801, 858, 928, 932). (See fn. 28).

(53) See findings 77-82, 120-6.

856, 885, 941, 1010, 1042, 1047, 1079-81, 1116, 1150, 1156-9, 1166-7, 1285-9, 1454, 1487, 1503-4, 1600-1, 1619, 1633). These reports consist of those submitted to the meetings of the Board of Directors and Executive Committee, together with copies of the minutes of such meetings, and in addition a copy of a form of financial report prepared for and sent out to insurance companies, rate schedules filed with California Railroad Commission, statistical statements prepared by P. G. & E. department of vice president and executive engineer and occasional newspaper items and court decisions or orders of the Railroad Commission (191, 199, 337 et seq., 350, 420-3, 451, 698-702, 1080, 1147, 1157, 1166, 1454, 1631).[54] Such reports when received by such

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(54) Applicant sends the following reports to Messrs. Fogarty and/or Freeman:

(a) Weekly—

(1) Cash report, showing collections and disbursements.

(2) Expenditures authorized under G. M. Estimates, submitted to the Executive Committee for approval.

(3) System Generating Report, showing power output system peaks and precipitation data.

(4) Consolidated Operating Report of Natural Gas Division of gas received and gas sent out.

(5) Statement of New Business connected, electric and gas.

(6) Minutes of meetings of Executive Committee. (Comm. Ex. 106)

(b) Monthly—

(7) Customers' Statement showing gain or loss in customers by departments and divisions.

officers of North American are scrutinized and filed (1148, 1454-5, 1503-4, 1601). These reports convey less information than is received by the directors and members of the Executive Committee who are present at such meetings (808-11, 1156, 1159, 1283-7).

95. The local directors of Applicant other than its officers generally do not know what information is furnished North American or Messrs. Fogarty

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(8) Capital Expenditures Statement, showing gross capital expenditures and property retired, work in progress, G. M.'s transferred to plant account, capital expenditure covered by Division Managers Authorizations, and status of purchasing department contracts.

(9) Consolidated income statements in comparative form—month, year to date, and 12 months to date, with supplementary statements showing revenue and expenses by major departments, accounting classifications and geographical divisions.

(10) Consolidated balance sheets in comparative form, with supporting schedules showing outstanding stocks and bonds, together with income statements and supplementary statistical data. (Comm. Exs. 27, 28, 90-105, 81-4, 87, 109, 125.)

(11) Minutes of meetings of Board of Difectors (419). (Comm. Exs. 5, 8, 11-2, 15, 17, 71) (Although agreed to send—Comm. Ex. 5, a request for them—Comm. Ex. 8, was not acted upon promptly—Comm. Exs. 9-11).

(12) Copy of report submitted to the Edison Electric Institute, showing sources and disposition of electric energy and classifications of customers.

and Freeman by Applicant (574, 746, 797, 857, 886, 941, 1011).

96. There is no difference between the information received by North American nor in the other relations with P. G. & E. since Mr. Black became president of Applicant, and those received, or that existing before that time (449, 574, 643, 746, 815, 1532, 1633, 1674).

97. Printer's proofs of the annual report prepared by P. G. & E. staff are sent to all directors of Applicant in advance of publications, for their suggestions, but those received by North American officers are not received enough in advance of the date of publication as to give sufficient time for them to make suggestions (270-2, 394, 812, 905, 1081, 1223, 1458, 1603) (Appl. Ex. 15).

98. Neither North American nor its officers have made any suggestions or recommendations with respect to pending matters under consideration by Applicant, nor have they attempted at any time to influence Applicant's action (1155-6, 1168-70, 1457, 1513, 1519, 1569-70, 1603, 1621, 1640-2, 1669) or the action of any director in any respect (115, 173-4, 345-6, 388-9, 407, 540, 566, 610, 626, 636, 662, 668, 683, 738, 782, 792, 829, 832, 851, 877, 883, 894, 918, 937, 1003, 1044, 1049, 1145, 1603, 1631, 1640, 1669). The only possible exceptions to the above are the following: (a) In 1933, when Applicant reduced its dividend on its common stock;[55] (b) Mr. Freeman suggested that the form of Applicant's annual

(55) See findings 89, 144, 145.

statement might be improved by placing the income statement before the balance sheet instead of after it as had been the custom; and this suggestion was adopted by Mr. Black (904-7, 1081, 1224-7, 1602-3, 1631, 1637) (Comm. Exs. 125, 126); (c) Mr. Freeman once commented that Applicant's cash position appeared low, to which Mr. Black replied that he did not believe it was (1149, 1174) (Comm. Exs. 113-5). (See also Comm. Exs. 110-2)

99. Applicant and its officers have never requested the views, advice, suggestion, or approval of North American or its officers, with respect to any pending matter (195, 447-8, 566, 636, 738, 792, 883, 899, 938, 1004, 1167-8, 1186 1513), nor has Applicant, its officers or directors, ever been advised of North American's views or attitude on any pending matter (173, 178, 345, 407, 530, 540, 566, 612, 626, 662, 737, 783, 830, 877, 894, 918, 937, 1003, 1048, 1060, 1504).

100. The officers of North American do not know any of the officers or directors of Applicant (and vice versa) and there has been no communication between them (527, 775, 796, 806-7, 828, 874.5, 893-4, 917-8, 1421-30, 1590) with the following exceptions:

101. Mr. Fogarty, a resident of Garden City, Long Island, New York, Chairman of the Executive and Finance Committee of North American, and its President from 1934 to 1939, entered its employ in 1902 (1420-1), knows Mr. Black, and is slightly acquainted with Directors Miller (526-7, 567), Chickering and Crocker, (660, 676-7, 1422) whom he has seen briefly on a few occasions (one

in California, others in New York (1432-3) but with whom he has had no discussions respecting Applicant, except in a brief and general way, and except that in 1933 Mr. Miller discussed the dividend reduction with him. In the same way he has met Mr. Downing, Mr. Coghlan (828-9, 844) and Mr. Foote (346, 365-7, 1429-31, 1498). He met Mr. Elsey at the one meeting of the Applicant's Executive Committee which he attended as a guest (1422, 1426-7, 1432). He has known Mr. Wishon from the time North American acquired the Western Power and its subsidiaries, at which time Mr. Wishon was an officer of San Joaquin (990, 981, 1009). He does not know any other officers or directors (1422-32). He owns no beneficial interest in any securities of Applicant (1453).

102. Mr. Shea, a resident of Lotus Valley, Long Island, president of North American, does not know any officer or director of Applicant, except Mr. Black, whom he has known slightly for about a year (1638).

102. Mr. Freeman, a resident of Yonkers, New York, has been vice president, a director and member of the executive and finance committees of North American since 1927. He was formerly a public accountant (1587-8). He has never been in California (1592) and knows none of Applicant's officers or other directors, save Mr. Black, Mr. Fogarty, Mr. Downing, Mr. Coghlan, Mr. Chickering and Mr. Wishon, the latter four of whom he has met in New York only two or three times

(676-7, 1589-91), and with whom he has discussed Applicant's affairs only briefly and in a general way (1628). He owns no beneficial interest in any securities of Applicant (1589).

104. The only directors or principal officers (excepting Directors Fogarty and Freeman) who own or hold any stock or securities of North American or its subsidiaries (112, 224, 244, 530, 556, 603, 620, 657, 690, 722, 770, 826-7, 870, 891, 902, 910, 990), are President Black who owns 100 shares (1069), and except that Directors Crocker (657, 665) and Wishon (990-1) are officers of family corporations which own some North American stock.

105. The dates of stockholders meetings, etc. of P. G. & E. and the number of notices sent out follows (Appl. Exs. 23, 26, 30, 31).[56]

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(56) See fn #14 and Finding #32.

Date	Shares Represented	%	North American Shares Owned	% of Total Outstand. Shares	% of Vote Cast	% of Shares Present Without N.A.	Notices
4/ 8/30	4,666,547	63	.....				One
4/14/31	7,481,065	70	2,075,455	19.21	27.2	50.79	One and a second one to shareholders holding 1000 shs. or over.
6/ 2/31 (Adj. Mtg. of 4/14/31	8,381,494	77.5	2,075,455	19.21	24.3	58.29	Notice of adjourned meeting to those from whom no proxy received.
4/12/32	7,449,414	67.5	2,075,753	18.10	[57]	49.40	One only
4/11/33	7,672,414	66.5	2,077,055	18.04	[57]	48.40	"
4/10/34	7,062,443	61.	2,077,055	18.07	28.9	42.93	"
4/ 9/35	6,705,090[58]	58.3	2,063,465	17.95	30.5	40.05	"
4/14/36	7,376,408	64.1	2,059,736	17.92	27.9	46.18	"
4/13/37	7,399,382	64.3	2,059,736	17.92	27.8	46.38	"
4/12/38	7,420,476	64.5	2,059,670	17.71	27.8	42.79	"
4/11/39	7,551,558	64.9	2,059,670	17.71	27.3	47.19	"
4/ 9/40	7,284,896[59]	62.6	2,059,670	17.71	28.3	44.89	"

[57] Proxies not kept. (367)

[58] Ex. 26 says 6,705, 129 shs.

[59] This represents 51.92% of the 6% First Preferred, 53.59% of the 5½% First Preferred, and 71.5% of the common (Appl. Ex. 31). The number of North American shares represented differs slightly in the exhibits cited and to that extent affects the percentages.

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106. The stock owned by North American[60] was represented at all these meetings by the attorneys-in-fact or proxies named by Applicant's management in the usual form of company proxy (305, 1604).[61] They were filed with the management prior to each meeting (Comm. Exs. 16, 59, 60, 62, 67-9). Such management proxies ever since the organization of the company have named as attorneys-in-fact, the three individuals who at the time occupied respectively the offices of President, Vice President and General Manager, and Treasurer (171, 225, 317-21, 849).

107. During said period there would have been more than a majority of stock represented at only two of said meetings (a quorum for the election of directors) if North American had not been represented at such meetings. If North American had not been represented at the remaining meetings, or had withdrawn therefrom, a quorum could probably have been obtained (without the representation of North American) by sending out an additional notice—as an attendance of 75% or more of the stockholders could have been and can be obtained for any stockholders meeting by sending out a second notice (314-7, 330-2). The meetings are well attended (305, 1296).

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(60) Wherever North American is named, it is intended to include therewith all of its subsidiaries and affiliates, and where control or influence is concerned, it is intended to include its officers (see findings #55-7, 62, 69-70, 76).

(61) See Finding #54.

108. The proxies since 1935 (when the proxy regulations of the Securities and Exchange Commission became effective) have named the then incumbent members of the Board of Directors, as the nominees for whom the proxies intended to vote. Applicant has therefore known in advance of each stockholders' meeting that the North American stock would be represented thereat and that its stock would be voted for the incumbent directors.[61]

RELATION WITH OTHER STOCKHOLDERS

109. No other stockholder has or has had representation on Applicant's board (but see Comm. Ex. 42 p. 4). No other stockholder owns as much voting stock as does North American (Appl. Ex. 20).

110. While Mr. Fogarty is acquainted with some of the officers of other corporations which are among the large stockholders of Applicant (Appl. Ex. 20), North American owns no stock in any such companies, and has never discussed or communicated with any of them, or the officers of any of them respecting the business and affairs of Applicant (1300-5, 1499-1502).

APPLICANT'S SELECTION OF JAMES B. BLACK AS PRESIDENT

111. James B. Black, President of Applicant, was born in Illinois, was brought ot California at the age of 12 when his parents moved there to reside and has lived in San Francisco and vicinity ever since, with the exception of the period from 1927 to 1935 when he resided in New York and

(61) See Finding #54.

served as a Vice-President of North American (1019, 1025).

112. He was educated in Oakland and San Francisco schools and at the University of California from which he was graduated in 1912 with the degree of B. S. in Engineering (1019).

113. During his school and college years he worked as a laborer in lumber camps and on construction projects. Upon graduation from college he was employed as a service inspector by City Electric Company, then a subsidiary of Great Western Power Company operating in San Francisco (1020). About 1915, the properties of City Electric Company were taken over by Great Western Power Company of California, successor to Great Western Power Company (1021). Mr. Black successively engaged in sales, sales engineering, and administrative work in the San Francisco division of Great Western. Later he became Division Manager, Assistant General Agent and General Sales Manager, and Acting General Manager. In 1922 he was made Vice President, General Manager and a director of that company. When Western Power Corporation acquired control of San Joaquin and of Midland, Mr. Black became a member of the Boards of these two companies (1022). After North American acquired control of Western Power Corporation, Mr. Black retained these positions until February 1927, when at the time he went to New York City at the invitation of North American he was made Vice President and a direc-

tor of Western Power Corporation (1021, 1024, 1440-2).

114. During the period 1927-1935 he was a Vice-President (but not a Director) of North American (1021, 1024). From 1927 until North American sold its California subsidiaries, one of his important duties was to supervise such subsidiaries (465, 1025, 1027, 1139, 1441, 1484).[62] After the sale, he was elected a Director of P. G. & E. on June 18, 1930 from which time, among his other duties, he looked after North American's stock investment in Applicant, visiting California about once each year, at which times he called on a few friends among the officers and directors of P. G. & E. and discussed company affairs in a general way (120, 178, 545-6, 620-2, 684-5, 779, 830, 1002-3, 1042-3, 1049, 1140) (Comm. Exs. 72-109). During this period he studied the reports and data furnished North American by Applicant. He discussed the 1933 dividend reduction with Mr. Earl and wrote Mr. McKee about it but did not take up the matter with Mr. Hockenbeamer (1045).[63] Black made no requests or suggestions respecting the conduct of Applicant's business or affairs (120, 178, 545, 620, 684, 830, 1002). During this period of five years he attended four directors' meetings and one meeting of the Executive Committee (Appl. Ex. 25).[64] Calls at the North American in New York by Applicant's

(62) See Findings #77-82.

(63) See Findings 144, 145.

(64) See Finding #37.

representatives were of the same character (1044).

115. Mr. Black was elected President of Applicant November 20, 1935 (Appl. Ex. 17) following the unexpected death of Mr. Hockenbeamer on November 11, 1935 (546, 1025, 1490). His selection was entirely the result of the initiative of Mr. C. O. G. Miller and other California directors (120-2, 183-4, 397-8, 546-51, 570-3, 622, 686-90, 721-43, 780-2, 854-5, 1056, 1140, 1448) many of whom had become acquainted with Mr. Black's capabilities prior to 1927 when he was in active charge of Great Western, an aactive competitor of Applicant (117-9, 540-8, 616, 660, 683-4, 778, 829.) Several of these directors were prepared to suggest Black if Miller had not done so (780). The fact that he was a Californian and was familiar with some of Applicant's properties, as well as his wide experience and youth were deemed qualifications (549-50, 622-3, 686-9, 721, 741, 780), and his selection met with the unanimous approval of the Board of Directors (186, 622, 686, 688, 742). Mr. Black was also recommended to Mr. Miller by a number of large stockholders (553).

116. No suggestion of Mr. Black's election was made by anyone in North American, by whom his selection was not anticipated and to whom it was a surprise (183-4, 549, 570-1, 1448-52, 1491-3, 1623).[65] The members of the Applicant's Executive Commit-

(65) In fact Fogarty had indicated to Downing that he thought the latter might be elected (185, 639, 1490).

tee[66] were in accord on his selection, before North American knew anything about it (549, 571, 638-40, 742). Mr. Black had no knowledge that he was being considered for the presidency until after the Executive Committee had decided to invite him to serve and the invitation was likewise a great surprise to him (399, 782, 794-5, 1056-8, 1140-2, 1451). North American was not enthusiastic at his leaving, *at* it was at that time short of executives (1450-1). The fact that Mr. Black was then an officer of North American was not considered by the P. G. & E. directors to be a favorable factor in considering his selection, and he was finally chosen only because they determined to their satisfaction that, if he were elected, he would not be subject to influence by North American (187, 232, 399-400, 572, 622-3, 640-1, 743, 795, 1144, 1169).

117. Prior to his election, it was agreed between the directors and Mr. Black that he would completely sever all relationship with North American and its affiliates (548, 551, 572, 689, 744, 795, 849-55, 1057-7). This he did in November 1935 just prior to his election as Applicant's president (551, 1025, 1058, 1452-3, 1493, 1593).[67] He thereupon moved

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(66) At that time included Directors Miller, Elsey and Chickering (686) (Appl. Ex. 18).

(67) Mr. Black owns 1,000 shares of Applicant's common stock and 9 shares of its preferred stock (1082). He owns 102 shares of the common stock of North American but owns no other securities of that company, its subsidiaries or affiliates (1069). His salary was neither discussed nor agreed upon until he reached San Francisco (742, 1143).

his residence back to California where he has since resided (1025).

118. There was and is no understanding or agreement (between Mr. Black and North American) that Mr. Black would consult with North American, or keep it advised, or in any way act for or in relation to it, after he became president of Applicant, nor is he in any respect the representative of North American (1134, 1138, 1143, 1196-7, 1282, 1290, 1462, 1476, 1488, 1493-5, 1518, 1600, 1615-6, 1622, 1624-5, 1652).

119. Mr. Black, as President and Director of Applicant, has not acted as a representative of North American, nor has he been controlled or influenced by that company, or by any of its officers (624, 922, 1082, 1145, 1169-70). His contacts with such officers (since his resignation from North American in 1935), have been few, consisting of from four to nine telephone calls a year (1146) and infrequent letters. Since his election he has called at North American offices on but two occasions where his conversations were social and general (1058-60). Mr. Fogarty of North American has called on him in San Francisco three times upon which occasions they conversed only on general matters (1061).

120. Mr. Black has never received any request or instructions from North American or its officers, respecting the personnel, business affairs or policies of Applicant (1060, 1081, 1170), and North American has never made any attempt directly or indirectly, to control or influence his action or the management or policies of Applicant (1170, 1292-1457,

1504, 1513, 1517, 1569, 1634). Mr. Black has never sought or received the advice, approval or recommendation of North American or its officers on any personnel (1204, 1431, 1457, 1574), dividend (1196) rate (1017, 1143, 1519), salary (1081), refinancing or other pending matter (1060, 1070, 1175-6, 1180, 1263-4, 1272, 1282).[68]

121. There have been no important changes in the organization or policies of Applicant since Mr. Black became President (125, 402, 449, 573, 643, 746, 1062, 1222-3, 1530-2, 1674-6), or in its banking connections (256, 1069), transfer agents, trustees (261) or registrars (1070), and no substantial changes in the organization of its personnel (448, 1204), nor have there been any changes in the relationship of Applicant and North American since

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(68) He advised Fogarty of the settlement of an important rate case (1453, 1455, 1486, 1514, 1572) (Comm. Ex. 71). He consulted Fogarty and other directors in connection with the 1936 refunding operations and a private sale of securities in 1938 with regard to the strength and the trend of the bond market, probable price and discounts (See finding #153-4) (1175, 1264, 1280, 1283-4, 1456, 1513, 1555). He has discussed (with Fogarty and Freeman) in the nature of a communication of facts to his directors, the instant proceedings and the progress of the Hetch Hetchy situation. (196, 408, 575, 642, 797, 885, 901, 1012, 1175, 1185, 1453, 1496, 1497-8, 1513, 1625-6) (Comm. Ex. 137) (See too Finding #54 re North American representatives on P. G. & E. board) Applicant's other directors do not know the extent of these contacts (189, 401, 573, 669, 745, 856, 885, 901, 940, 1009).

Mr. Black became president, 1062, 1223, 1530-2, 1674-6).[69]

P. G. & E. AN INDEPENDENT OPERATING COMPANY

122. This Board of Directors is composed of a group of very intelligent men of initiative, independence and ability.[70] All business of the P. G. & E. is fully discussed at the meetings of the Board and of the Executive Committee. Everyone present freely expresses his judgment and opinions and is not dominated at all by another (113, 346, 525, 533, 607, 662-3, 676, 741, 852, 876-7, 939, 1461).

123. The relations between the members of the Board, the Executive Committee and the officers are cordial and harmonious (391, 568, 594, 638, 642, 669, 738-40, 853-4, 867, 884, 900, 938).

124. Applicant's management would resent any offer of counsel or advice, although they believe any expression thereof should be fairly considered (190, 389, 402, 553-4, 566, 598, 624, 637, 642, 645, 662-5, 691, 738, 744, 783-4, 792, 839, 852, 877-8, 884, 894, 899, 922, 938, 981, 1003-4, 1082, 1168-70, 1197, 1459-61, 1505-9, 1577-9, 1678).[71]

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(69) See Findings #77-82, 92.

(70) The responses of all the witnesses, officers and directors of the applicant were responsive, comprehensive and frank.

(71) When asked to describe the type of problem which he felt should be submitted to North American as Applicant's largest stockholder before final action was taken thereon Mr. Black answered—"As

125. They unanimously feel that P. G. & E. can best be managed by Westerners for Westerners (190-1, 573, 643, 664, 692, 844, 880, 897, 923, 926-8, 987, 1083, 1293-4, 1669-71).[72]

126. No local director has ever at any time observed anything which indicated that Applicant was controlled, directly or indirectly, by North American or that its management or policies were subject to a controlling influence, directly or indirectly, by that

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a stockholder I don't think that any problem should be considered by it except as it might care to come in our stockholders' meeting and express itself. As directors, the officers of North American Company who are now on our Board, I think, ought to be kept informed as to what is going on. They ought to have the opportunity, if they care to, to come out here and attend Board meetings and express their opinions." (1186) (See too 1650) (See Findings #156-158).

(72) See Findings #34-51, 99.

Mr. Black said: "I think it would be very detrimental to the company, Pacific Gas and Electric Company, if there was any such attempt made, and certainly it would be detrimental if it was successful, which I don't for a moment believe that it would be . . . this is known as the local company, that there is a good deal of local pride in it, and if it became known that it was a company controlled by outside interests, and particularly by a New York holding company, I am sure its position in public esteem would be weakened, and I am sure it would be subject to some political criticism, and they might or might not be serious, but at least they would be harmful; and I think that any attempt to interfere in the operations of the property by anyone who was not here constantly on top of the job would result in inefficiency and loss of morale and would have a generally bad effect." (1293-4).

company (126, 236, 347, 553-4, 624, 662-3, 683, 691, 783, 839, 877, 883, 894, 899, 922, 981, 1082, 1092, 1457-62 1603, 1640, 1669-71).[45]

127. North American could not, if it attempted to do so and its attempts were resisted by the local directors, secure sufficient proxies to obtain a majority of the stock represented at a stockholders' meeting (555, 564-5, 597, 625, 663-4, 692, 784, 840-1, 870, 879, 895, 922-5, 927-8, 982, 1082-3, 1456-63, 1671, 1678, 1682).[73]

128. Neither by absenting itself from stockholders meetings nor by attempting to impose conditions for its participation or voting therein could North American control Applicant or subject its management or policies to a controlling interest, as its absence would not prevent the obtaining of a quorum, or if it did, the incumbent directors would remain in office and any vacancies would be filled by vote of the remaining directors (1457, 1603, 1669, 1682). (Appl. Ex. 27.)

129. The maximum influence that North Ameri-

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(73) Mr. Miller stated: "I assume, of course, that the management of the Pacific Gas and Electric Company would remain proper and would attempt to fulfill its duties. The Board of Directors of the Pacific Gas has representatives of a number of groups of influential people in San Francisco. I think if those groups agreed on any course as being the proper one for the corporation to follow, and the management of the corporation was in accord with that, I think they could stand up against anything." (555) Other directors than the North American directors expressed similar opinions. (See Findings #32, 54, 106-8).

can could exert on the control, management or policies of Applicant, by virtue of its ownership of 17.71% of its stock, would be by participating in stockholders' meetings, and by electing the maximum number of its representatives by cumulative voting of its stock. The maximum effect of such cumulative voting at any stockholders' meeting held since North American became a stockholder, would be the naming of four North American representatives out of a board of fifteen directors (625).[74]

BANKING AND FISCAL AGENCIES

130. Applicant's banking connections, transfer agents, registrars and trustees are predominantly Californian, were all selected before North American became a stockholder and no important changes have been made since that time (249-51, 256-61, 262-8, 355-6, 914-5, 1069-70, 1282). North American has never acted as transfer agent, coupon paying agent, registrar or performed fiscal services of any nature for applicant as it did prior to 1935 for its admitted subsidiaries (1212-3, 1522). Applicant has not had occasion to borrow money from banks for over thirty years (258, 1070).

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(74) The smallest attendance at any stockholders' meeting was that of 58.3% of the stock at the meeting of April 9, 1935. 17.95% of the stock represented at such meeting could elect 4 directors out of 15 by cumulative voting. No stockholder has yet exercised that right (368). (See Findings #54, 106-110, 156)

ABSENCE OF OTHER RELATIONSHIPS

131. There have been no contracts between Applicant and North American or its subsidiaries except the contract dated March 29, 1930 (453, 476, 1062, 1458, 1605).

132. Neither North American nor any of its affiliates or employees has ever performed any services with or without charge, for Applicant (127, 453, 475-6, 1062, 1458, 1527, 1605, 1668).[75]

133. There has been no exchange of operating information between Applicant and the admitted subsidiaries of North American (126).

134. There have never been any intercompany loans or financial transactions between Applicant and North American or its subsidiaries (127, 348, 1062, 1458, 1604).

135. All of Applicant's major acquisitions and construction projects have been and are decided upon, budgeted and carried out within the P. G. & E. organization and entirely independent of North American at all stages (192-4, 229-30, 404-5, 1011-2, 1177-85, 1509-12, 1646-8).

136. North American's organization has never assisted Applicant in the preparation of any Registration Statements (502, 1217-8, 1654-5).

137. The Secretarial Department of North American under the supervision of its Secretary (1526) has never assisted Applicant in any manner (1218-9, 1527).

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(75) See Findings #81, 51, 82.

PROFESSIONAL EMPLOYEES

138. Applicant and North American do not employ the same accountants (1605), attorneys (1205-7) or engineers (116, 126, 136).[75]

EMPLOYEES

139. Applicant does not employ any former officers or employees of North American, with the exception of Mr. Black, and with the exception of those who were officers or employees of acquired companies at the time of their acquisition (238-40, 1199-1202, 1519). North American has never recommended or suggested to Applicant the employment of any person or been asked its views thereon (1201-4, 1457, 1519).

140. No employees of Applicant, nor of North American or of its admitted subsidiaries have ever been loaned by either to the other (116, 136, 238-40, 1199, 1200-2, 1204-6, 1519).

141. Applicant maintains a pension plan which all its employees, having a year or more of service are eligible to join (499-500, 825). Mr. Coghlan assisted in the formulation of this plan and had no communication with North American representatives with respect thereto (841) (but see Comm. Ex. 29, par. 2, 4).

POLITICAL CAMPAIGN ACTIVITIES

142. In regard to its expenditures in political activity (defeat of public ownership of utilities)

Applicant has acted independently of North American (1186, 1513).

PROXIES

143. Neither North American nor any of its officers have ever made any suggestion or request or been consulted with respect to the form of proxy, the proxy machinery, or the stockholders' meetings (1067, 1477, 1604). North American never suggested the name of any person to serve on the proxy committee (1477, 1604).[76]

1933 DIVIDEND INCIDENT

144. In 1933 the P. G. & E. earnings had decreased. When the subject of dividend declaration was brought up at the meeting of Applicant's board, and after the usual recommendation, it was moved by a director, in the desire to be "ultra conservative" that the dividend be declared at the rate of 6% per annum instead of the usual 8% (174-6, 199, 410, 610-2, 832, 857). The motion was carried and said reduced dividend paid (201). Upon public announcement of the decision of the board, the directors representing the North American, together with C. O. G. Miller, then in New York (576-7) requested the board to reconsider its action (411, 611, 830, 1045-7, 1447-8, 1505, 1516, 1568-9, 1622, 1653). It never did (412, 611, 738, 793, 857, 1457).[77]

145. North American has never made any suggestions or recommendations, nor has it been asked

(76) See Findings #54, 108.

(77) See Findings #23, 89, 98.

its views, with respect to the dividend policy or the declaration of dividends (174-6, 197-202, 306-9, 452, 578, 610-2, 644, 747-8, 798-9, 831, 858, 885-6, 901, 941-2, 1012-3, 1045-7, 1079, 1194-8, 1447-8, 1515, 1517-8, 1567-9, 1652-3), with the single exception of its request in 1933 that Applicant reconsider its action in reducing the common dividend (1045-7, 1448, 1505, 1568-9, 1622).

FINANCING

146. The following table shows all the securities issued by applicant since its incorporation which were sold to an underwriter or underwriting syndicate and the participations, when known, of each underwriter (Appl. Ex. 42) (Comm. Ex. 141):

Date Sold	Security Sold	Par Value	Underwriters and Participation
1908–1911	Un. & Ref. Mtge. Bonds 5's	$15,074,000	N. W. Halsey & Co.
Jan. 1912	Gen. & Ref. Mtge. Bonds 5's	20,000,000	J. P. Morgan & Co.
Sept. 1912	" " " "	5,000,000	" " "
Mar. 1912	Common Capital Stock	3,000,000	Residue, after stock was offered to stockholders, taken by underwriters: Sutro & Co. 58,500 J. Barth & Co. 58,400
Sept. 1913	6% Gold Notes	4,500,000)	
Dec. 1913	" " "	500,000)	
Mar. 1914	1 Yr. 5% Notes	5,000,000)	Harris, Forbes & Co.
Apr. 1914	" " "	1,922,000)	and
June 1914	" " "	64,000)	N. W. Halsey & Co.
July 1914	" " "	14,000)	
Jan. 1915	1 Yr. 5% Notes	4,000,000	Bond and Goodwin
Mar. 1915	Gen. & Ref. Mtge. Bonds 5's	1,000,000	N. W. Halsey & Co.
Apr. 1915	" " " "	1,000,000	" "
May 1915	" " " "	1,000,000	" "
Nov. 1915	" " " "	52,000	" "
Dec. 1915	" " " "	48,000	" "
Jan. 1916	" " " "	1,900,000	" "

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Date Sold	Security Sold	Par Value	Underwriters and Participation
Jan. 1917	Gen. & Ref. Mtge. Bonds 5's	3,060,000	The National City Co.
Dec. 1918	" " " "	3,500,000	" "
July 1919	First Pfd. 6% Capital Stock	5,000,000	Blyth, Witter & Co.
May 1920	5 Yr. 7% Col. Tr. Gold Notes	7,765,000	" "
June 1920	" " " " "	1,621,000	" "
July 1920	" " " " "	614,000	" "
Mar. 1921	1st & Ref. Mtge. Bonds Ser. A 7's	10,000,000	The National City Co.
May 1921	" " " " " "	720,000	" "
Dec. 1921	1st & Ref. Mtge. Bonds Ser. B 6's	10,000,000	" "
Feb. 1922	" " " " " "	10,000,000	" "
Feb. 1923	1st & Ref. Mtge. Bonds Ser. C 5½'s	10,000,000	" "
Oct. 1923	" " " " " "	10,000,000	" "
May 1924	" " " " " "	12,500,000	" "
Sept. 1924	" " " " " "	12,500,000	" "
June 1925	1st & Ref. Mtge. Bonds Ser. D 5½'s	10,000,000	" "
May 1926	" " " " " "	10,000,000	" "
Oct. 1927	1st & Ref. Mtge. Bonds Ser. E 4½'s	15,000,000	" "
Feb. 1928	" " " " " "	20,000,000	" "
Aug. 1930	1st & Ref. Mtge. Bonds Ser. F 4½'s	25,000,000	" "
Jan. 1931	" " " " " "	25,000,000	" "
Apr. 1935	1st & Ref. Mtge. Bonds Ser. G 4's	45,000,000	" "

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Underwriters:	Participation
Lazard Freres & Co., Inc.	$9,000,000
Brown Harriman & Co., Inc.	9,000,000
Blyth & Co., Inc.	9,000,000
Edward B. Smith & Co.	4,500,000
The First Boston Corp.	4,500,000
Bonbright & Co., Inc.	2,250,000
H. M. Byllesby & Co., Inc.	2,250,000
Dean Witter & Co.	2,250,000
E. H. Rollins & Sons Inc.	2,250,000

Date Sold	Security Sold	Par Value
July 1935	1st & Ref. Mtge. Bonds Ser. G 4's due 12/1/64	$30,000,000

Underwriters:	Participation
Lazard Freres & Co., Inc.	$6,000,000
Brown Harriman & Co., Inc.	6,000,000
Blyth & Co., Inc.	6,000,000
Edward B. Smith & Co.	2,700,000
The First Boston Corp.	2,700,000
Dean Witter & Co.	2,100,000
Bonbright & Co., Inc.	1,500,000
H. M. Byllesby & Co., Inc.	1,500,000
E. H. Rollins & Sons, Inc.	1,500,000

Date Sold	Security Sold	Par Value
Sept. 1935	1st & Ref. Mtge. Bonds Ser. G 4's due 12/1/64	$20,000,000

Same Underwriters—Same % of Participation.

Mar. 1936	1st & Ref. Mtge. Bonds Ser. H 3¾ due 12/1/61	$90,000,000

Underwriters:	Participation
Blyth & Co., Inc.	$14,000,000
Brown Harriman & Co., Inc.	8,000,000
Edward B. Smith & Co.	8,000,000
The First Boston Corp.	8,000,000
Lazard Freres & Co., Inc.	6,000,000
Dean Witter & Co.	6,000,000

Underwriter:	Participation
Bonbright & Co., Inc.	4,000,000
H. M. Byllesby & Co., Inc.	4,000,000
E. H. Rollins & Sons, Inc.	4,000,000
Bankamerica Company	500,000
Mitchum, Tully & Co.	500,000
Elworthy & Co.	500,000
Wm. Cavalier & Co.	500,000
Brush, Slocumb & Co.	500,000
Schwabacher & Co.	500,000
Dillon, Read & Co.	7,500,000
Kuhn, Loeb & Co.	7,500,000
Morgan Stanley & Co., Inc.	10,000,000

Date Sold	Security Sold	Par Value
Mary 1936	1st & Ref. Mtge. Bonds Ser. H 3¾ due 12/1/61	$30,000,000

Same Underwriters—Approximately the same % Participation, last 3 excluded.

Date Sold	Security Sold	Par Value
Oct. 1936	1st & Ref. Mtge. Bonds Ser. I 3½'s due 6/1/66	$35,000,000

Same Underwriters—Approximately the same % Participation.

Date Sold	Security Sold	Par Value
Sept. 1939	1st & Ref. Mtge. Bonds Ser. H. 3¾'s due 12/1/61	900,000
Mar. 1940	1st & Ref. Mtge. Bonds Ser. H 3¾'s due 12/1/61	360,000
Sept. 1930	1st Ref. Mtge. Bonds Ser. H ¾'s due 12/1/61	850,000
		2,110,000

The aforesaid $2,110,000 principal amount of Series H bonds were sold to Blyth & Co., Inc., who immediately thereafter sold the bonds to the trustee for the sinking fund under the mortgage securing said bonds.

Note: The company has no information concerning persons, if any, other than those listed above who may have partici-

pated in underwritings prior to 1935. The said persons listed are the persons to whom the securities were sold by the company.

147. Applicant has sold no stock issues to underwriters since 1914 with the exception of a $5,000,000 issue sold to Blyth, Witter & Co. in 1919 (712).[78]

148. N. W. Halsey & Co., whose representatives were active in applicant's organization, played a prominent part in its financing prior to 1919. Although Blyth, Witter & Co., a California underwriter and investment banker, headed applicant's business in 1919 and 1920, National City Company, a New York house which Mr. Miller described as a successor to N. W. Halsey & Co., was the principal underwriter for all of applicant's financing between March 1921 and January 1931 (580).[79]

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(78) See findings 33 and footnote 52.

(79) For a time prior to June 1, 1920, Mr. George K. Weeks, National City Company's west coast representative, was a director of applicant (Appl. Ex. 16). His successor as representative of that banking house, but not as a member of applicant's board, was Mr. Stanley Russell (1389). Mr. Miller and other directors thought that National City Company played such an important role in applicant's financing because it was the natural thing to give the business to N. W. Halsey & Co.'s successor, but that the selection of National City Company was "about 94% the selection of Mr. Hockenbeamer (although he considered other solicitations) or his predecessor Mr. Creed" (580-1, 646, 752, 799-801).

149. Blyth & Co., Inc. (a California corporation) or its predecessor, Blyth, Witter & Co.[80] by its President, Charles R. Blyth[81] had for some time been anxious to participate in the underwriting of P. G. & E. financing (211-14, 440, 440-4, 584, 587-92, 649, 757, 803, 862, 944, 1251, 1253, 1263, 1270-2, 1385-8, 1390-99, 1547-52, 1664) (Comm. Ex. 128, 9, 132, 135). He, (some of the members of his organization are also acquainted with P. G. & E. men) has been a close friend for many years of most of applicant's directors and is well known to all of them (207, 440-5, 584, 586-7, 589-92, 648-9, 651-2, 756-7 759,

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(80) This firm purchased a $5,000,000 issue of P. G. & E. 6% 1st Preferred shares in July 1919 and $10,000,000 5-Yr. 7% Collateral Trust gold notes in May, June and July 1920 due in part to Blyth's friendship with Frank Drum, then President of P. G. & E. (1382, 1384).

(81) Blyth has lived in California for thirty-one years and now resides in Burlingame, California, near San Francisco (1380). He is the largest stockholder of Blyth & Co., Inc., (1381). He has been engaged in the investment banking business since 1906. He helped organize a corporation known as Blyth, Witter & Co. in 1914 which was converted into a partnership in 1930. Blyth & Co., Inc. was incorporated in 1933. It or its predecessor has had a New York office for about 15 years. Mr. Charles Mitchell, formerly President of National City Company is Chairman of the Board of Blyth & Co., Inc. Mr. Bernard W. Ford is Vice President and a Director of Blyth & Co., Inc., residing in San Francisco. Mr. Loring R. Hoover is President of the New York Office of Blyth & Co., Inc. Mr. Roy Shurtleff is Vice President and Director of Blyth & Co., Inc., residing in San Francisco (1382-4).

761-2, 802, 860-3, 887, 901-2, 943-5, 1015, 1016, 1284, 1387-8, 1391, 1399-1401, 1553).[82] Blyth & Co. participated in applicant's financing to the extent of 15% to 22½% from 1921-31 (1386). In the financing in 1935 and following, the position of Blyth & Co. has improved (Comm. Ex. 136) (1382-6). In June 1935 it was in second position and participated in the management fee (1251, 1393-5).

150. Applicant's first financing after Mr. Black became President was a $90,000,000 issue in March 1936. The only other public issues by applicant since then were a $30,000,000 issue in May of that year and a $35,000,000 issue in October of the same year. Each of these issues was purchased by an underwriting syndicate headed by Blyth & Co., Inc. (Appl. Ex. 42) (215-22, 554, 446, 589-95, 650-3, 669, 757-66, 803, 862-5, 886-7, 942-7, 1071-4, 1263-81, 1399, 1403-9, 1554-1562, 1664).

151. In January 1936, Mr. Black called Mr. Blyth to his office, told him that applicant was preparing to do some refunding and asked if his firm was in a position to head the syndicate to be formed

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(82) Mr. Miller testified "Blyth & Co. was the largest California house that could very easily do the business, it was a California corporation, I had a son-in-law who was a partner, and the other two partners were very close friends of mine; I think it was a natural thing; Lazard Freres were a California house only 45 years ago, they moved away from San Francisco; there was no reason why they should have the business at the same rate. It was the natural thing to want your friends to have it if the conditions warranted." (592)

in connection therewith (1071, 1273, 1403).[83] Mr. Blyth told him that his firm would be glad to do so and that he was then requested to have his associates get in touch with applicant and start work on the registration statement (1071). Previous to the time he had this conversation with Mr. Blyth, Mr. Chickering was the only director of applicant who had spoken to him about the desirability of Blyth & Co., Inc. heading applicant's underwriting (1072, 1266, 1270, 1558, 1663).[84] Thereafter the following

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(83) He told Blyth that one reason he was choosing his firm was because of the fact that—"they were the leading western house and that he felt that wherever there was a western firm that could contribute to the underwriting group that they should be taken in". The other directors felt the same. (590-92, 804, 863, 945, 1016, 1073, 1662)

(84) See findings 118-120. Shortly after he went to San Francisco, Mr. Chickering told him that Blyth & Co., Inc. should be given an opportunity to see whether or not they could do the job of heading applicant's underwriting syndicates and that he (Mr. Chickering) hoped that he would recommend that firm (757-8). He told Mr. Chickering that he was not then particularly interested in the problem because he had too many other things to look after—"It was a matter that was too far ahead to worry about;" that his reasons for deciding to recommend Blyth & Co. were the same reasons that he had given Mr. Hockenbeamer almost a year before (759, 1072). See finding 154. Black told the Executive Committee or the board or both, that he had decided to let Blyth & Co., Inc. manage the March 1936 syndicate and asked if they had any objections and if they did have he would like to have them determine what his course should be; and that—"not only did they have no objections, but they approved with great enthusiasm what I had

California houses were added to the 1936 syndicates: Bankamerica Company, Mitchum, Tully & Co., Elworthy & Co., Wm. Cavalier & Co., Brush, Slocumb & Co., and Schwabacher & Co. (1073, 1273-4).[85] Blyth & Co. has no commitment for future financing (1085).

152. North American had nothing whatever to do with the selection of Blyth & Co. as underwriter (944-5, 1016, 1263-5, 1272, 1557).

153. There were no agreements or understandings between Black and North American representatives relating to applicant's future financing or who should head or participate in its financing (1263-4, 1272, 1282, 1554-6, 1662). He did discuss in a general way with Mr. Fogarty (as well as other members of the applicant's board of directors), the bond market and conditions in general (1175, 1264, 1275-6, 1281, 1283-4, 1513, 1555, 1562, 1665).[58]

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proposed". (216-7, 444, 590, 804, 863-4, 943, 1074, 1266) They were also well pleased with the results (1281).

(85) With regard to the inclusion of Dillon Read & Co., Kuhn Loeb & Co. and Morgan Stanley & Co., Inc. in the March 1936 syndicate, they were included to add financial strength only and they were so advised as was Blyth 218, 220, 222, 445, 593-5, 651, 763-4, 804-5, 864, 944, 1015, 1274-8, 1403-6, 1559-62, 1664). "I was careful to make it clear to Mr. Blyth that I could see no reason why we should include them in any subsequent financing. It is possible that if we have a very large issue that we might give consideration to include one or all of them again." (1278-9) These three firms were not included in subsequent syndicates (1279, 1408). See finding No. 146.

154. North American has never underwritten any securities issued by applicant, nor participated in any way in its financing. It has not been consulted, nor has it made suggestions as to who should be the underwriters of applicant securities, who should be the members of underwriting syndicates (215, 223, 438, 443, 583, 592, 596, 651, 653, 661-2, 754-5, 762-3, 803, 805-6, 861, 864, 868, 888, 944-6, 1016, 1070-5, 1174-6, 1228-38, 1262-4, 1271-2, 1275-6, 1278, 1280-2, 1284-5, 1392, 1396-7, 1401-3, 1406-7, 1410, 1513, 1534-6, 1538-47, 1557, 1561-3, 1659-64) (Comm. Ex. 131) or participated in any discussions or negotiations relating to any underwriting, except that in 1935, Mr. Black (then with North American) suggested to Mr. Hockenbeamer that Blyth & Co. be given the leadership of a syndicate then being formed because Blyth & Co. was a California house. Mr. Hockenbeamer chose Lazard Freres & Co., Inc. (437, 1072-5, 1242-7, 1251, 1253, 1257-8, 1260-2). All negotiations respecting the issue and sale of applicant's securities have been conducted in San Francisco by the President of applicant directly with the underwriters (207, 210-1, 213, 215-6, 220, 222-4, 433-4, 439, 447, 580, 582-3, 594, 647-8, 661-2, 754-6, 763, 801-2, 859-60, 865, 944, 1242-5, 1248-9, 1264-6, 1273-9, 1283, 1406-9, 1541, 1543, 1551) (Comm. Ex. 130-1, 134).[86]

155. The last financing of the applicant occurred

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(86) Solicitation by prospective underwriters of North American representatives were referred to the applicant's office in San Francisco (Comm. Ex. 128-9, 132, 133).

in February of 1938 when it privately placed bonds in the principal amount of $15,000,000 with five insurance companies and one bank, recommended to the Board or the Executive Committee, or perhaps both, by Mr. Black (767). Blyth & Co., who counselled with Mr. Black on this matter (1409), received a finder's fee in connection with the disposition of these bonds. (222, 446, 595, 669, 1281-2).[87] There is no understanding between Black and Blyth regarding future financing (1409).

ATTITUDE OF NORTH AMERICAN

156. The North American agreed to surrender control over those of its subsidiaries acquired by P. G. & E. (Finding #66, 67). It has not since attempted to exercise any control (1629, 1673) (Findings #88-92). It has been satisfied with the acts of the management of P. G. & E. and the results thereof (1564-6, 1569-70, 1622, 1634, 1673). If it became dissatisfied with either the acts of management or the results of operations, it would exercise such power as its stockholder position would permit, to influence or control the affairs of the P. G. & E. (1106, 1567, 1579, 1635)[88] or sell its in-

(87) See findings 163.

(88) Fogarty said that the primary difference between the position of North American and a small stockholder is—"that the officer of the North American Company being a director of the Pacific Gas and Electric Company has a voice in its affairs as a director, whereas a small stockholder, not being a director, would not be in that position, and naturally the affairs of the company being managed by

terest (1671-3). The exercise of such rights would not be effective under present circumstances.[89]

157. If the North American people knew that Mr. Black was about to recommend to the Board certain action which they considered detrimental to the interests of North American—

> "I think we would inquire into the reasons for it first and if we felt that it was not in the interests of the company, we might raise the question and have it brought before the Board or Executive Committee"

by presenting their views to Mr. Black and possibly attending a Board meeting (1505-8, 1565-6).[71]

158. Applicant and The Detroit Edison Company are the only operating utility companies in which North American had ever acquired as much as 17% of the voting securities without seeking to

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the Board and two officers of the North American Company being directors and participating in that capacity as directors, are in a different position from a small stockholder who is not a director." (1582) (1186, 1514, 1648-50) (see findings #122-129).

But Freeman stated: ". . . it seems to me that anything that affects North American as a stockholder he (Black) ought to take up with us as the directors representing North American, but that anything that relates to the management of P. G. & E. as such—if he has got a united Board behind him, he doesn't have to consult with us. If he did consult with us, it would be because he thought we could possibly contribute something in the way of knowledge of the subject, or advice." (1575-6, 1584, 1635, 1648-50) (See, too, Tr. 1514).

(89) See findings #127-9.

supervise or dominate their affairs (1473, 1608) (Comm. Ex. 46).[90]

JURISDICTION OF THE CALIFORNIA RAILROAD COMMISSION

159. The Railroad Commission of the State of California was created by a constitutional amendment adopted October 10, 1911. By the "Public Utilities Act", effective March 23, 1912, that Commission was given power to regulate and control all public utilities, except that incorporated cities and towns, including the City and County of San Francisco, retained the powers over public utilities which they had on March 23, 1912. On August 8, 1915, the rate-fixing powers of the Commission were extended over all public utilities operating in the State (R. R. Comm. Ex. 1, 2).

160. The Commission's powers of regulation and supervision cover all matters relating to public utility rates, rules and regulations, contracts and practices, equipment, facilities, or service; additions to and betterments of plant; methods of manufacture, distribution, transmission, storage or supply; safety and health of employees, patrons, customers and the general public; standards for measurement of quantity, quality, pressure, voltage or other conditions pertaining to the supply of the product, commodity or service furnished, accuracy of meters and appliances for measurements and the testing of such appliances; accounting practices and procedure, in-

(90) See re Detroit Edison Co., S. E. C. Release No. 2208 ('35 Act).

cluding forms of account, records and memoranda to be kept and maintained (R. R. Comm. Ex. 3, for electric companies as of January 1, 1938, Ex. 4, for gas companies as of January 1, 1926, both originally prescribed January 1, 1913, and which are now similar to those prescribed by the Federal Power Commission (463-4)); the exercise of franchise rights and the regulation of competition between utilities by means of certificates of public convenience and necessity; the ascertainment for each purpose specified in the Public Utilities Act of the value of the property of each public utility in the State, and the making of revaluations to ascertain the value of additions, betterments, extensions and new construction; the sale, lease, assignment, mortgage or other disposition or encumbrance of the whole or any part of the property of a public utility necessary or useful in the performance of its duties to the public; the merger or consolidation, directly or indirectly, by a public utility of its properties, or any part thereof, with any other public utility; the purchase, acquisition, taking or holding by one public utility of any part of the capital stock of any other public utility organized and existing under the laws of California; the issuance of stock, stock certificates or other evidences of interest or ownership, and bonds, notes or other evidence of indebtedness; the accounting for the disposition of the proceeds of all sales of securities; the assumption by a public utility of any obligation or liability as guarantor, indorser, surety or otherwise in respect of the securities of any other person, firm, or

corporation; inspection of accounts, books, papers and records; hearing and deciding complaints respecting any act or thing done or omitted to be done by any public utility, including any rule, regulation or charge previously fixed by or for any utility, in violation, or claim to be in violation, of any order or rule of the Commission; to order reparation, with interest from date of collection, on account of an unreasonable, excessive, or discriminatory charge; to require any public utility to file monthly reports of earnings and expenses and periodic or special reports concerning any matter about which the Commission is authorized by law to inquire or to keep itself informed on.

161. Under the provisions of the Public Utilities Act of the State of California, each public utility is required to furnish to the Commission, in such form and detail as the Commission may prescribe, all tabulations, computations and all other information required by it, to carry into effect any of the provisions of the Act, and to make specific answers to all questions submitted by the Commission; also, to deliver to the Commission upon request copies of any and all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers and records in its possession or in any way relating to its property or in any manner affecting its business, and also a complete inventory of all its property in such form as the Commission may direct.

162. The Commission has supplemented the Act with a number of general orders (456-65, 479, 481) (R. R. Comm. Exs. 1, 2).

163. Applicant has appeared before the Commission in more than 900 formal proceedings, most frequently as an applicant for permission to perform an act which may not be performed without Commission approval, such as rate matters, adequacy of service, extension of facilities, accounts and records, and mergers and consolidation, or in complaint proceedings or investigations (456).

164. Bonds amounting to $470,307,000 (of which $286,705,000 were outstanding on June 30, 1940) were issued by Applicant under authorization of the Commission.[91]

165. Preferred stock amounting to $134,000,000 par value and common stock of $125,000,000 par value (including the stock of Applicant owned by North American and its subsidiaries), all presently outstanding, were issued under authorization of the Commission (478).[92]

166. Applicant has acquired the property of a large number of public utilities pursuant to authorization of the Commission (479-81).[93]

167. The Commission has issued certificates of public convenience and necessity to Applicant, permitting it to exercise about 200 franchises for line extension and construction projects (R. R. Comm. Ex. 1).

168. There are and have been no management,

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(91) See Findings #27, 146 (480-499).

(92) See Findings #25, 28, 30, 33, 69-70.

(93) See Finding #74.

service, sales, construction[94] or other contracts in existence, nor has there been nor is there evidence of control or influence exerted or attempted over Applicant's finances, management or policies to present problems of regulation.

169. Applicant has fully complied with the provisions of the Public Utilities Act of the State of California and the applicable rules, regulations and orders of the Commission promulgated thereunder (463).

170. The statement filed by the Commission comments on the wisdom of the growth of applicant, particularly in its acquisition and consolidation of the properties of the operating subsidiaries of North American, pursuant to Commission orders above referred to, into one physically interconnected and coordinated intrastate operating utility, and concludes:

> "Our object in presenting these observations, as stated at the outset, has been merely to summarize the authority exercised by this state regulatory Commission. They are not presented either to support or controvert the facts alleged in the application herein of Pacific Gas and Electric Company praying for an order of your Honorable Commission declaring it not to be a subsidiary of North American Company. Yet, as also stated in the beginning, we are aware of no instance during the course of this Commission's regulation of Pacific Gas and Elec-

(94) As such terms are defined in Sections 2 (a) (19), (20) and (21) of the Act.

tric Company when its management or policies appear to have been either controlled or influenced by North American Company. We may add that we perceive no public interest existing within the State of California, either for the protection of investors or consumers, which compels the conclusion that applicant, Pacific Gas and Electric Company, should be declared subject to the obligations and duties imposed by the federal Holding Company Act upon subsidiary utility corporations."

(R. R. Comm. Exs. 1-4)

INFORMATION AVAILABLE

171. Present and prospective investors in Applicant's securities can obtain the information necessary to appraise the financial condition and earning power of applicant.

172. Applicant now keeps and ever since 1913 has kept its accounts in accordance with the uniform system of accounts for gas and electric corporations prescribed from time to time by the California Railroad Commission (463).

173. All reports filed pursuant to the uniform system of accounts are open to the public (R. R. Comm. Exs. 1, 2) (64).

174. Applicant issues a comprehensive annual report containing a balance sheet and profit and loss statement, a copy of which is sent to each stockholder (272-83, 812-14, 904-7, 1081, 1223-27, 1602-3) (Appl. Ex. 15).

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(89) See findings #127-9.

175. Applicant's common stock is listed on the New York Stock Exchange and its common and preferred stocks are listed on the San Francisco and Los Angeles Stock Exchanges (251), and in that connection it files with such Exchanges and the Securities and Exchange Commission all reports required by such Exchanges and by the Securities Exchange Act.

176. It has issued bonds on several occasions since the enactment of the Securities Act in 1933, and in that connection has filed the registration statements required by that Act.

VALLEJO ELECTRIC LIGHT AND POWER COMPANY[1]

177. Applicant has requested an order under Sections 3 (a) (1) and (2) of Title I of the Public Utilities Act of 1935 relating to itself and subsidiary Vallejo.[95]

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(1) Title supplied by Petitioner.

(95) See Findings #1, 2, 3.

"Sec. 3(a). The Commission, * * * by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this title, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—

(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly in-

178. Vallejo Electric Light and Power Company, a California corporation, with 10,000 authorized and outstanding capital shares having a par value of $10 each, owns and operates an electric distribution system in the City of Vallejo and its vicinity, in California (100, 839); practically all of the electric energy distributed by it is purchased from Applicant (101, 149). It has no funded debt (Appl. Ex. 36(1)). It was organized in 1897 by Mr. K. Casper, the grandfather of Dr. E. J. Casper, its present President (843); in 1929 Applicant purchased 45.83% of the capital stock at a cost of $229, 166.67, from heirs of K. Casper (146-8, 838, 841)

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trastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;"

"Sec 2(a)(7). 'Holding company' means—

(A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company * * * unless the Commission, as hereinafter provided, by order declares such company not to be a holding company;"

It is also provided that the Commission may, upon application, declare that a company is not a holding company under clause (a) upon making certain findings as set forth therein.

(Public Utility Act of 1935—Title I—Control of Public-Utility Holding Companies.)!

(Appl. Ex. 13).[96] For the year ending December 31, 1939, Vallejo had book assets of $1,220,251.69 and a net income of $122,323.35 (Appl. Exs. 12 and 36(k)).

179. The five-member board of Vallejo consists of Mr. John P. Coghlan, Vice President and Director of Applicant, and Mr. T. J. Straub, an attorney in Applicant's employ, Dr. E. J. Casper and his sisters, Mrs. Irma Silverstein and Mrs. Mattye Rosenberg. The Casper family owns 54.17% of the capital stock (100, 152, 837-8).

180. Vallejo has been managed by the Casper family throughout its history—first by K. Casper, then by his son, Albert Casper, and now by the latter's son, Dr. E. J. Casper, and Applicant has never participated in its affairs other than as a minority stockholder (100, 150, 786, 838-9, 842-3).[97] Ap-

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(96) Now carried on Applicant's books as an investment.

(97) Coghlan testified "That company is really a family company. Under our minority interest we have little or nothing to do with the policies. We have one stockholders' meeting a year and three or four directors meetings and at the directors' meetingings Dr. Casper usually reports upon earnings and upon business possibilities and sometimes upon rate problems and that is about all. He carries on the company largely in his own way." (838-9) (see Rule U-3A-2 (a) (1) and (2)).

Mr. Black, President of Applicant, testified that the only contacts he had had with Dr. Casper were in an attempt on behalf of Applicant to purchase the capital stock of Vallejo owned by Dr. Casper and his sisters, if Applicant could acquire it "at the right price"; and that he did not participate

plicant renders no supervisory or management services to Vallejo, although at the latter's request P. G. & E. recently did some engineering and construction work on a substation at "practically cost" (151, 1087). Applicant's representatives do not exchange operating information with Vallejo, and its Division Manager in that area has no direct contacts with Dr. Casper (151).

CONCLUSION

181. Considering all facts of record, the Commission should find and conclude:

1. That the Pacific Gas and Electric Company is not a subsidiary of the North American Company, except within the statutory definition of Section 2 (a)(8)(A) of the Public Utility Holding Company Act of 1935;
2. That the North American Company does not have the power to control the Pacific Gas and Electric Company;
3. That the Pacific Gas and Electric Company has never been and is not now controlled, directly or indirectly, by the North American Company;
4. That the management and policies of the Pacific Gas and Electric Company are not subject to the controlling influence, directly or indirectly, of the North American Company,

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in the formulation or consummation of the policies of that company 1086).

Applicant's local directors testified that the problems of Vallejo are not discussed at Applicant's board meetings (371, 557, 627, 666, 728, 786, 931, 987, 997-8).

wherefore it is not necessary or appropriate in the public interest and for the protection of investors or consumers, that the Pacific Gas and Electric Company be subject to obligations, duties and liabilities imposed by the Public Utility Holding Company Act of 1935;[98]

5. That Applicant is now and ever since January 1, 1912 has been predominantly a public utility company, whose operations as such do not now extend, and never have extended, beyond California;
6. That all of Applicant's public utility assets now are and always have been located entirely within California, and it does not buy or sell electricity outside that State (98, 143);
7. That Applicant, and every subsidiary company thereof which is a public utility company, are predominantly intrastate in character, and carry on their business exclusively in California, in which they are organized (98, 144);
8. That the exemption of Applicant, and every subsidiary company thereof as such, from the provisions of Title I of the Public Utility Act of 1935 would not be detrimental to the

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(98) Any change would be apparent to the Securities and Exchange Commission upon scrutiny of Pacific Gas and Electric Company's proxy solicitation material; 1934 Act, Section 14, and appropriate rules thereunder (1461) (see Findings #54, 106, 108, 127).

public interest or to the interests of investors or consumers.

182. Mr. Troy has advised the trial examiner that he is diligently engaged in the preparation of a brief or argument regarding the public interest, particularly from the point of view of taxpayers and most particularly consumers. He says that his argument will be ready by April 30, 1941, and asks that the Commission wait for this paper before making its decision (see Finding #7).

Counsel for Applicant moved that certain testimony be stricken. Ruling was reserved (159). The motion is denied.

Respectfully submitted,
JOHN G. CLARKSON,
Trial Examiner.

Dated: April 16, 1941.

[Endorsed]: Filed October 24, 1941. Paul P. O'Brien, Clerk.

Securities and Exchange Commission
Washington

File No. 31-55

Public Utility Holding Company Act of 1935—
Sections 3(a)(1), 3(a)(2), and 2(a)(8).

Holding Company Act

Release No. 2988

In the Matter of

PACIFIC GAS AND ELECTRIC COMPANY, ET AL.

FINDINGS AND OPINION OF THE COMMISSION

Exemption of Holding Company or Subsidiary Company Predominantly an Intrastate Public Utility Company

Applicant having applied for exemption as a holding company under Sections 3(a)(1) and (2) of the Public Utility Holding Company Act, exemption granted, the Commission finding that the applicant and every subsidiary company thereof which is a public utility company from which applicant derives, directly or indirectly, any material part of its income are predominantly intrastate in character and carry on their business in a single State in which the applicant and every subsidiary company thereof are organized, and that the applicant is predominantly a public utility company whose operations as such do not extend beyond the State in which it is organized.

DECLARATION OF STATUS

Subsidiary Company

Application having been filed pursuant to Section 2(a)(8) of the Public Utility Holding Company Act for an order declaring applicant not to be a subsidiary company of a specified holding company owning more than 10% of applicant's outstanding voting securities, order denied upon applicant's failure to show that its management and policies are not subject to a controlling influence by such holding company, so as to make it necessary or appropriate in the public interest and for the protection of investors and consumers that applicant be subject to the obligations, duties, and liabilities imposed by the Act upon subsidiary companies of holding companies.

APPEARANCES:

Herman Phleger, William B. Bosley, and Robert H. Gerdes, for Pacific Gas and Electric Company.

Ira H. Rowell, for the Railroad Commission of the State of California.

E. M. Calkin, for the Public Utilities Division of the Commission.

Pacific Gas and Electric Company has filed an application pursuant to Sections 3(a)(1) and 3(a)(2) of the Public Utility Holding Company Act of

1935, for an order exempting it from regulation under the Act as a holding company and, pursuant to Section 2(a)(8) of the Act, for an order declaring it not to be a subsidiary company (as that term is defined in the Act) of The North American Company.[1]

After due notice a hearing was held before a trial examiner. The Railroad Commission of the State of California appeared by its representative to introduce in evidence a memorandum and other documents showing the extent of such Commission's regulation over PG&E, but made no request for formal intervention.

Edward P. E. Troy filed an application to inter-

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(1) The original application was filed by Pacific Gas and Electric Company and Great Western Power Company of California, a subsidiary of Pacific Gas and Electric Company. In a subsequent amendment, however, it was stated that Great Western Power Company of California and its subsidiaries, having wound up their affairs and distributed their assets to Pacific Gas and Electric Company, had been dissolved. The application, insofar as it relates to Great Western Power Company of California and its subsidiaries, will therefore be dismissed.

In this Opinion we shall sometimes refer to the various companies involved in the case as follows:

Pacific Gas and Electric Company.....PG&E or Applicant
The North American Company..North American
Great Western Power Company of California... Great Western
San Joaquin Light and Power Company....San Joaquin
Midland Counties Public Service Company..Midland Counties

vene in the proceeding, representing that he was a taxpayer of the city of San Francisco and a consumer of gas and electricity furnished by applicant. We denied the application without prejudice to the right to renew it at a future date, and ordered that Troy be permitted to participate at the hearing to the extent of introducing evidence and cross-examining witnesses, provided that such evidence and cross-examination were competent, relevant and material to the issues involved.

At the conclusion of the hearing counsel for applicant and counsel for the Public Utilities Division filed requested findings of fact. The trial examiner submitted his advisory report recommending that the application be granted. Counsel for the Public Utilities Division filed exceptions to certain of the trial examiner's findings and conclusions relating to the application under Section 2(a)(8). Briefs were filed and we heard argument.

Applicant claims that it is entitled to an order under Sections 3(a)(1) and 3(a)(2) on the theory that it and each of its subsidiary companies which is a public utility company from which it derives, directly or indirectly, any material part of its income, are entirely intrastate in character and carry on their business entirely in a single state in which they are organized, and that it is predominantly a public utility company whose operations as such do not extend beyond the state in which it is organized.[2]

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(2) Section 3(a) provides in part:

"The Commission, by rules and regulations

North American owns, controls, and holds with power to vote 2,059,670 of applicant's 6,261,273 shares of outstanding common stock, which represents 32.89% of the outstanding common stock and 17.71% of applicant's outstanding voting securities; thus applicant is a subsidiary company of North American within the meaning of Section 2(a)(8)(A) of the Act. Applicant claims, however, that it meets the test prescribed in the last paragraph of Section 2(a)(8) and therefore is entitled to be declared not to be a subsidiary company of North American. It is admitted that applicant is not an intermediary company through which control of

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upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this title, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if——

"(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

"(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto; . . . "

another company is exercised; hence the issues before us under Section 2(a)(8) are whether applicant has shown (a) that it is not controlled, directly or indirectly, by North American by any means or device whatsoever and (b) that its management or policies are not subject to a controlling influence, directly or indirectly, by North American so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that it be subject to the obligations, duties, and liabilities imposed by the Act upon subsidiary companies of holding companies.[3]

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(3) Section 2(a)(8) provides, in part:

" 'Subsidiary company' of a specified holding company means—

"(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B)), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company;

* * * * *

"The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an

The Applicant and Its Operations—Applicant is predominantly a public utility operating company, incorporated under the laws of California. Its principal business is the production, purchase, transmission, distribution, and sale of electric energy and natural and manufactured gas in northern and central California. Applicant also distributes and sells water in a number of communities, produces and distributes steam in parts of San Francisco and Oakland, and operates a street railway and bus system in Sacramento. Its electrical distribution system extends into 46 of the 58 counties of California and, as of June 30, 1940, it served 909,155 customers in 137 incorporated cities and towns, 235 unincorporated communities, and in extensive rural areas. Its gas distribution system served, as of June 30, 1940, 636,316 customers in 101 incorporated cities and towns, 79 unincorporated communities, and numerous rural areas.

As of June 30, 1940, applicant's total assets were stated on its books at a figure of $791,146,218. Its

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intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies."

gross revenues for 1939 were $107,175,353 and for the first six months of 1940 were $53,089,276.

Applicant owns and operates 47 hydro-electric generating plants and leases and operates 2 additional such plants; it also owns and operates 9 steam electric generating plants. Applicant owns 15 gas generating plants, 6 of which are used to serve communities not connected with natural gas transmission lines and the remaining 9 as standby against interruptions of natural gas service. Natural gas is purchased at the wells from fields located within the State of California and is transported through the company's own pipe line and through a pipe line owned by the Standard Pacific Gas Line, Incorporated, half of the voting stock of which is owned by applicant.

Applicant sells and delivers electric power in California at a point 20 miles from the California-Nevada state line to the Sierra Pacific Power Company, a public utility company distributing electricity in both California and Nevada. Applicant purchases at wholesale electric energy from The California Oregon Power Company, a public utility which generates and sells electric energy in both California and Oregon, the connection being 70 miles below the Oregon-California state line. All the public-utility properties of applicant are located in California, and applicant does not purchase or sell any gas or electricity outside of California or at the state line.

Applicant's subsidiaries include the San Joaquin Light and Power Company, a utility company which

is in the process of liquidation;[4] Standard Pacific Gas Line, Incorporated, which owns a pipe line extending from the Kettleman Hills oil and gas field in Kings County to San Pablo in Contra Costa County, and 50% of whose voting securities are owned by applicant; and Western Canal Company, which owns and operates an irrigation system in Butte and Glen Counties, California, and 85% of whose voting securities are owned by applicant. Applicant also owns 45.8% of the only class of stock of Vallejo Electric Light and Power Company, an operating utility company which is engaged in distributing electricity in the city of Vallejo, California, and which purchases all of its electric energy from applicant.[5]

History of Applicant—PG&E was organized in 1905 by persons associated with N. W. Halsey & Co., an investment banking firm, and by local men associated with California Gas and Electric Company and San Francisco Gas and Electric Com-

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(4) Applicant owns over 99.8% of the stock of this company, all of its properties have been transferred to applicant, and its principal asset is cash in certain banks, which cash is on deposit pending settlement of litigation with a small minority interest.

(5) Applicant also has the following subsidiaries: Arlington Properties Company Ltd. (which owns some real estate), Crystal Lake Company, Ltd. (which owns a ranch in Shasta County, California), both of which are 100% owned by applicant, and Valley Electrical Supply Company (which deals in electric appliances at Fresno and vicinity), 95% of whose voting power is owned by applicant.

pany, both of whose properties it acquired. PG&E at the present time represents the consolidation of over 400 separate companies. Most of these companies were acquired by the exchange of PG&E stock for the securities of the acquired companies, and a later absorption of the properties, although in a few cases the properties were purchased directly.

Great Western Power Company (subsequently Great Western Power Company of California) was organized under the laws of California in 1906; it was from its inception a subsidiary corporation of Western Power Corporation, a New York company. Applicant purchased large amounts of power from Great Western; but, since it could not purchase Great Western's entire output, Great Western entered into competition in the same territory. The testimony indicates that during most of its existence 90% of Great Western's revenues came from territory in which it was in competition with applicant.

Applicant's vice president and general manager, P. M. Downing, testified that several unsuccessful attempts were made to acquire the Great Western properties during the period from 1911 to 1925. James B. Black, a former employee of one of Great Western's subsidiary companies, was vice president and general manager and a director of Great Western from 1922 until 1927. Early in 1925, as the result of negotiations by Black and several Western Power Corporation officers, Western Power Corporation acquired San Joaquin Light and Power

Company and its subsidiary Midland Counties Public Service Company, which companies served an area contiguous to that served by Great Western. In the latter part of 1925, North American acquired control of Western Power Corporation, and thus of its subsidiaries—Great Western, San Joaquin, and Midland Counties. In 1927, Black went to New York as vice president of North American; his principal duties at that time being to keep in touch with and assist the three California subsidiaries. Close contact was maintained between the local operating men and Black.

In September of 1929, A. F. Hockenbeamer, then president of applicant, entered into negotiations with North American for the acquisition of the California subsidiaries. In these negotiations, Black was the principal representative of North American. Following a series of conferences with Black in San Francisco, Hockenbeamer came to New York in January of 1930; and an agreement was reached by which North American was to receive 1,825,000 shares of PG&E common stock in consideration for the transfer of the securities held by Western Power Corporation in Great Western, San Joaquin, and Midland Counties and the cancelation of an open account indebtedness of $19,180,776 owed by the California subsidiaries to Western Power Corporation.

Several of applicant's directors testified that they had been apprehensive of the power that North American would acquire by the ownership of such a large block of securities, but that Hockenbeamer

had told them that North American had given him assurances that it would not interfere with PG&E's management.[6] Black testified that he assured Hock-

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(6) Chickering, then and now one of applicant's directors, testified with respect to the transaction:

"Q. Now, during those discussions and before the transaction was authorized by the Board of Directors, were there any discussions with respect to the position of the North American Company as a stockholder after the transaction was consummated?

A. Yes sir. The first thing that I objected to was the North American domination. I said I was afraid of it and Mr. Hockenbeamer said that he had been assured that there would be no domination, that they simply have an investment position; they wanted to have three members on the Board of Directors but that they would not exercise any domination or attempt to increase their holdings.

* * * * *

Q. What discussion was had in 1929 and 1930 concerning the extent to which it was contemplated that North American might participate in the Applicant's affairs if it acquired a large block of its common stock?

A. Well, naturally all we knew was what Mr. Hockenbeamer told us and I for one, and several other directors, were apprehensive of any holding company acquiring such a large interest and we voiced that apprehension in the meetings of the Executive Committee. Mr. Hockenbeamer told us that the North American Company would take an investment interest only and would not make any effort to control us. He also told us that they would not increase their proportionate ownership in our stock. Whether there was any agreement to that effect or not, I don't know, but we took Mr. Hockenbeamer's word for it.

Q. Would you say that those assurances by

enbeamer that, insofar as he could direct the policy, there would be no interference by North American.[7] It was orally agreed that North American would be entitled to three members on applicant's board of directors and one member on its executive committee. The formal contract was signed in San Francisco on March 29, 1930, the consolidation was approved by the Railroad Commission of California on May 14, 1930,[8] and the actual transfer of securities was made in June of 1930 at Jersey City, New Jersey.

Most of the employees of the acquired companies were retained, some of them in high executive positions which they still hold. Very soon after the acquisition of securities, the properties of the newly acquired subsidiaries were consolidated with those of applicant. By means of an offer of its preferred stock in exchange, applicant acquired the several

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North American were received at the insistence of certain members of the Applicant's Board?

A. Well, I think that all of us felt that way, Miss Calkin. I think even Mr. Hockenbeamer felt that way."

(7) With respect to these assurances, Black testified:

"There was never any time limit put on it. It was just a general understanding between Mr. Hockenbeamer and myself that that would be done. There was nothing ever said about how long it should last or any considerations as to changes if conditions changed in the future."

(8) Decision No. 22432 of the Railroad Commission of the State of California.

million dollars of preferred stock of Great Western and San Joaquin that was still outstanding, with the exception of 353 shares of San Joaquin. Great Western and Midland Counties were dissolved in 1936 and 1939, respectively, but liquidation of San Joaquin is being delayed pending the settlement of litigation with regard to the small minority interest still outstanding.

Applicant's Stockholders—As of August 1, 1940, applicant had outstanding the following securities:

6,261,273 shares of common stock of par value of $25 per share;

4,197,659 shares of 6% cumulative preferred stock of par value of $25 per share;

1,173,163 shares of 5½% cumulative preferred stock of par value of $25 per share;

$277,681,000 of First and Refunding Mortgage Bonds;

$9,032,000 of bonds issued by the San Joaquin Light and Power Company, the payment of which has been assumed by applicant.

Holders of common stock and holders of preferred stock have full and equal voting rights. Each stockholder is entitled to one vote for each share held and may cumulate his votes in the election of directors. Stockholders' meetings are held annually at which directors are elected to serve until the next stockholders' meeting.

North American, as of August 1, 1940, owned 2,059,670 shares of applicant's common stock—which represent 32.89% of the outstanding common stock

and 17.71% of the total voting stock.[9] This investment is carried on the books of North American at a figure in excess of $63,000,000; since 1937 the annual dividends received on this stock have been in excess of $4,000,000 and represent from 20% to 25% of North American's corporate gross income. North American is by far the largest stockholder of applicant, the second largest stockholder being Standard Gas and Electric Company, a New York corporation which owns 200,420 shares of applicant's common stock—which represents 1.72% of the voting power. The next three largest holders are as follows:

Sun Life Assurance Company of Canada—120,198 shares of common stock and 55,000 of preferred stock;

Pacific Lighting Corporation (a California corporation)—131,900 shares of common stock;

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(9) The shares in addition to the 1,825,000 shares obtained in the Western Power transaction were acquired by purchase when applicant made an offering of common stock to existing shareholders in 1931.

The following chart shows North American holdings in PG&E since June 12, 1930.

Date	Total Shares Outstanding (common and preferred)	Shares Owned by North America	Percent of Total Voting Stock
June 12, 1930	9,173,163	1,825,000	19.89
Dec. 31, 1933	11,514,834	2,077,055	18.04
Dec. 31, 1936	11,495,884	2,059,670	17.92
July 31, 1940	11,632,095	2,059,670	17.71

The decrease in the percentage of stock owned by North American is due to the sale of additional shares of preferred stock by applicant.

The American Superpower Corporation (a Delaware corporation)—100,000 shares of common stock.

The remaining shares are represented for the most part by small holdings.

The number of shares of stock held by stockholders resident within and without California and the relative percentages as of August 1, 1940, were as follows:

	Preferred	%	Common	%	Total	%
In California	3,842,183	71.5	1,725,349	27.6	5,567,532	47.9
Outside Calif.	1,528,639	28.5	4,535,924	72.4	6,064,563	52.1
	5,370,822	100.0	6,261,273	100.0	11,632,095	100.0

Under the corporation laws of California, the presence in person or by proxy of the holders of the majority of the shares entitled to vote in any stockholders' meeting constitutes a quorum for the transaction of business, and if a quorum is not present at such meeting, a majority of the shares in attendance may adjourn the meeting, but no other business may be transacted.[10] The record shows that from 1930 until the date of the hearing, at only two meetings, both in 1931, were enough shares in attendance, in addition to the shares held by North American, to constitute a quorum. North American's holdings have represented from 24 percent to

(10) Deering's Civil Code of California (1937) Section 316.

30 percent of the total votes cast at stockholders' meetings.[11]

Applicant's Board of Directors and Chief Executive—Applicant's board of directors has always consisted of 15 members. The executive committee of the board of directors consisted of five members until North American acquired its interest in 1930, at which time the by-laws were amended to provide for six members. At the present time there are again only five members.

The present board of directors consists of five directors who are officers and full-time employees of applicant, eight directors who are prominent San Francisco business men, and two directors who are admittedly representatives of North American.

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Date of Meeting	Percentage of shares represented in person or by proxy	Percentage of total votes cast by North American	Approximate percentage of voting securities owned by North American at date of meeting	Percentage of total outstanding shares present, exclusive of North American
Apr. 14, 1931	70.0	27.2	19.8	50.2
June 2, 1931	77.5	24.3	19.8	57.7
Apr. 12, 1932	67.5	.....	19.2	48.3
Apr. 11, 1933	66.5	.....	18.1	48.4
Apr. 10, 1934	61.0	28.5	18.0	43.0
Apr. 9, 1935	58.3	30.5	18.1	40.2
Apr. 14, 1936	64.1	27.9	18.0	46.1
Apr. 13, 1937	64.3	27.8	17.9	44.4
Apr. 12, 1938	64.5	27.8	17.9	44.6
Apr. 11, 1939	64.9	27.3	17.7	47.2
Apr. 9, 1940	62.6	28.3	17.7	44.9

No record of individual proxies was kept in 1932 and 1933.

Neither of these two North American representatives is a member of the executive committee.

Pursuant to the oral agreement of 1930 under which North American was to have three directors and one member of the executive committee, James B. Black, then a vice president of North American, Guy C. Earl, who had been president of Great Western, and Edwin Gruhl, then vice president and general manager of North American, were selected as the North American representatives on the applicant's board and they became directors on June 18, 1930. Black was also appointed to the executive committee, but after several weeks Earl replaced him.

Earl was very active as a director and executive committee member, attending substantially all the meetings. At such meetings he took extensive notes which he later sent to Black, along with copies of the minutes of the past executive committee meetings and the various reports that the president gave to executive committee members and directors. For these services Earl received a salary of $12,000 per year from North American; he received no salary from PG&E. One of Black's principal duties for North American during this period was to keep in close touch with applicant's affairs, and although he attended only four meetings of the applicant's board, he was able to do so through Earl's detailed reports and by fairly extensive correspondence with Hockenbeamer. Hockenbeamer sent numerous reports and financial statements along with his letters,

which often gave detailed explanations of applicant's operations.

Gruhl died in 1933 and was succeeded by F. L. Dame, then chairman of the board of directors of North American. Dame died late in 1933; and at Black's suggestion, F. W. Doolittle was appointed to his place as a North American representative. Earl died on June 25, 1935. Black and Freeman (vice president of North American) testified that Black and Hockenbeamer discussed a possible successor to Earl but arrived at no solution, and shortly thereafter Black became applicant's president. No one has since been appointed to carry on the duties formerly performed by Earl. Since the date of Earl's death and the appointment of Black as president of PG&E, North American has had only two directors and has not had a representative on the executive committee. North American's present representatives on applicant's board are J. F. Fogarty, chairman of the executive and finance committees of North American, and H. C. Freeman, vice president of North American.

None of the applicant's other large stockholders has representation on the board, with the possible exception of Pacific Lighting Corporation. C. O. G. Miller, who has been a director and member of the executive committee since 1913, is chairman of the board of Pacific Lighting Corporation, but he is not generally considered a representative of such company.[12]

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(12) Foote, secretary and treasurer of applicant, testified that Miller did not represent Pacific Light-

Applicant's president has always been its chief executive officer. F. G. Drum, one of the original incorporators, was the first president of applicant, serving until 1920, when he retired. He was succeeded by W. E. Creed, who served until his death in 1927. Creed was succeeded, in turn, by A. F. Hockenbeamer, who had been with the company since 1907, having come to San Francisco as a representative of N. W. Halsey & Co., the investment bankers who financed applicant in the earlier part of its history. Hockenbeamer, who had handled applicant's financing since early in Drum's administration and who had conducted the negotiations with Black leading to the acquisition of the Western Power Corporation subsidiaries in 1930, died unexpectedly in November of 1935, following a short illness. Since November 20, 1935, applicant's president has been James B. Black, formerly the vice president of North American whose job it was to keep close watch over North American's interest in applicant.

Miller and Chickering's testimony in respect of the election of Black was in substance as follows: The only members of the executive committee at the time were Miller, Chickering, and Elsey. After two informal meetings, they decided to recommend that the directors elect Black as president of PG&E. The non-officer directors held several private conferences and agreed to vote for Black. Miller called

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ing Corporation, but Downing, applicant's vice-president and general manager, testified that Miller did represent such company.

Fogarty (Black's superior at North American) to get his permission to approach Black, and then called Black to ask whether Black would accept the presidency if the board elected him. At Chickering's insistence, Miller called again to ask whether Black would sever his relations with North American, and Black assured him that he would. The board then unanimously elected Black. Fogarty testified that upon Miller's first call, he told Miller he would think the matter over but that North American would hate to lose Black because Black was one of their senior executives; and that upon a second call the following day, he told Miller North American did not feel it should stand in Black's way.[13] According to the testimony of several of applicant's directors, they selected Black because he was a comparatively young man, a Californian who was familiar with the Great Western properties as both an operating man and an executive, and because his experience in New York had given him excellent training in utility financing.

Since he has been president, Black has nominated as directors five local men and two representatives of North American. Before he left for San Francisco he suggested that Fogarty become a director.

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(13) Fogarty testified that prior to these calls he had had a conversation with Downing of PG&E in which he told Downing that, since he was the No. 2 man in applicant's organization, he (Fogarty) assumed that Downing would be its next president and added that "if that were so, the North American Company as a stockholder would feel quite satisfied."

Following Doolittle's resignation in 1936, he nominated Freeman at Fogarty's request. Black and Fogarty testified that Black did not discuss with North American whom he would nominate as local directors. McIntosh, who was elected December 18, 1935, had previously served in the place of Anderson, one of the senior members of the board, on several occasions when Anderson had taken extensive trips. Wishon, who was elected in October of 1936, had been president of San Joaquin Light and Power Company and was appointed vice president and assistant general manager of applicant following the consolidation. William W. Crocker, who was elected in October of 1937, succeeded to a vacancy left by his father. Silas H. Palmer, elected in November of 1936, and Henry D. Nichols, elected in March of 1938, are prominent local business men.

Proxy Committee—It has been customary for the president to nominate as the proxy committee the directors who are the president, the vice president and general manager, and the secretary and treasurer; his recommendations have always been followed by the board. It has also been customary for the proxy committee to seek the election of the incumbent directors, including the North American representatives. When Black was with North American, he usually wrote Hockenbeamer each year requesting that the current North American representatives be reelected. More recently, however, no such requests have been made but applicant's proxy committee has included the incumbent North American representatives in its proxy, the

assumption being that North American would communicate any desire to have the personnel of their representation changed. North American has always forwarded its proxy to the management's proxy committee.[14]

Applicant's Financing—Throughout its corporate existence, applicant's only sales of stock issues to underwriting syndicates were part of a $3,000,000 common stock issue in 1912, and a $5,000,000 6% preferred stock issue in 1919 which was sold to Blyth, Witter & Co. Applicant has sold preferred stock of approximately $76,000,000 par value and common stock of $65,000,000 par value without the assistance of banking firms or underwriters. Hockenbeamer was the dominant figure in applicant's financing from 1906 until his death.

With the exception of two issues purchased by J. P. Morgan & Co. in 1912, N. W. Halsey & Co. was the underwriter for all of the bond issues of applicant until Halsey & Co. went out of business in 1916. From 1916 until January 1931 National City Company, which was represented by Stanley Russell, a close personal friend of Hockenbeamer, headed the syndicate for all of applicant's bond issues. Applicant's next public sale after 1931 was a $45,000,000 bond issue sold in April 1935 to a syndicate headed by Lazard Freres & Co., Inc., in

(14) Freeman testified that he looks over the proxy to see that North American's representatives are included in the slate proposed as directors and to see whether any changes have been made with rspect to the other directors.

which Brown Harriman & Co., Inc., and Blyth & Co., Inc., had second and third positions, respectively. Black testified that Hockenbeamer had called him several times with respect to this financing, requesting his opinion on the relative position and financial strength of a number of recently formed banking firms and seeking information about bond prices. He further testified that he had recommended to Hockenbeamer that Blyth & Co., Inc., head the syndicate but that Hockenbeamer chose Lazard Freres & Co., Inc., because Stanley Russell had, in the meantime, gone over to that firm as its president. The directors approved the choice. Representatives of several investment banking houses had approached Black, then vice president of North American, in an endeavor to get Black's assistance in obtaining either the leadership of or a participation in this financing; however, Black stated that he merely relayed the information to Hockenbeamer. Lazard Freres & Co., Inc., also headed the syndicate for two subsequent bond issues, $35,000,000 in June 1935 and $20,000,000 in September, 1935, Blyth & Co., Inc., having second position on the west coast and a participation in the management fee.

The first financing after Black became president was a $90,000,000 bond issue in March 1936, the syndicate for which was headed by Blyth & Co., Inc. Both Chickering and Black testified that shortly after Black was elected, Chickering expressed dissatisfaction with the way Lazard Freres & Co., Inc., had handled the previous issues and sug-

gested that Blyth & Co., Inc., be given an opportunity to head the next financing; that Black had replied that he was not particularly interested in the problem of financing at that time because of other pressing problems, but that early in 1936, Black advised the board that he had decided to select Blyth & Co., Inc., to lead the syndicate; and that the board unanimously approved the proposal. Dillon, Read & Co. and Kuhn, Loeb & Co. each had a $7,500,000 participation, and Morgan Stanley & Co., Inc., a $10,000,000 participation. Black and Blyth both testified that these investment banking firms were included because of the large size of the issue and that it was understood that this would not give them an interest in future issues. They did not participate in the next two bond issues, $30,000,000 in May 1936 and $35,000,000 in October 1936. Fogarty of North American denied that he suggested their inclusion in the March issue when Black had called him several times to get his opinion as to the status of the bond market. Applicant's latest financing was a sale of $15,000,000 of bonds to five insurance companies and one bank. Black called Fogarty to get his advice as to what discount he would have to give to interest the prospective purchasers.

Reports to North American—Applicant regularly sends to North American a variety of detailed weekly and monthly reports. After Earl's death Hockenbeamer instructed Foote, applicant's secretary, to send North American the same reports and documents Earl had sent; and, as has been seen,

Hockenbeamer himself sent numerous reports, frequently accompanied by detailed letters of explanation.

The following reports which are given to members of the executive committee are also sent weekly to Fogarty or Freeman:

(1) Cash reports showing collections and disbursements;

(2) Expenditures authorized under general manager estimates submitted to the executive committee for approval;

(3) System generating report showing power output, system peaks and precipitation data;

(4) Consolidating operating report of the Natural Gas Division of gas received and gas sent out;

(5) Statement of new business connected, electric and gas;

(6) Minutes of meetings of the executive committee.

The following reports, copies of which are furnished to the members of the executive committee, are sent monthly to Fogarty or Freeman:

(7) Customers' statement showing gain or loss in customers by departments and divisions;

(8) Capital expenditures statement showing gross capital expenditures and property retired, work in progress, general manager estimates transferred to plant account, capital expenditures covered by division managers' authorization, and status of purchasing department contracts;

(9) Consolidated income statements in compara-

tive form—month, year to date, and 12 months to date, with supplementary statement showing revenue and expenses by major departments, accounting classifications, and geographical divisions;

(10) Consolidated balance sheets in comparative form, with supporting schedules showing outstanding stocks and bonds, together with income statements and supplementary statistical data.

The following reports which are not received by directors or members of the executive committee are also sent to Fogarty or Freeman:

(11) Minutes of meetings of the board of directors;

(12) Copy of report submitted to the Edison Electric Institute, showing sources and disposition of electric energy and classifications of customers;

(13) Copies of gas and electric rate schedules, revised from time to time by the filing of new schedules with the California Railroad Commission;

(14) Copies of "Report for Insurance Companies" prepared annually and sent to large insurance companies and other institutional investors;

(15) Statistical statements prepared by the Department of Vice President and Executive Engineer;

(16) Rate schedules filed with the California Railroad Commission;

(17) Court decisions and orders of the Railroad Commission of interest to PG&E.

North American has never requested any information from applicant which has been refused to it.

Other Relationships with North American—

(a) Telephone calls and personal visits—Black and Fogarty testified that they have not had more than four to nine long distance telephone conversations each year. Black does call occasionally, however, to advise Fogarty of contemplated rate reductions and bond refundings. For example, on one occasion Black called to get Fogarty's opinion as to the advisability of making a proposed rate settlement that involved several million dollars, and on various other occasions Black has called to get Fogarty's opinion on the condition of the bond market.[15] Black has been in New York twice since 1935, and Fogarty has been in San Francisco four times. Black testified that they discussed applicant's affairs in a general way in each of these occasions. Several of the other PG&E directors have visited the North American offices on occasional trips to New York; these visits were characterized as being of a social nature.

(b) Service contracts—Applicant has no service contracts with North American and does not as a routine matter receive advice on rates, accounting, engineering, tax matters, sales, depreciation, personnel, and other similar operating matters. It does not participate in North American's group purchasing arrangements and there have been no monetary loans between the companies.

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(15) This practice of asking North American's advice in connection with proposed financing was also followed by Hockenbeamer in telephone conversations with Black when the latter was associated with North American.

(c) The 1933 dividend incident—Evidence has been offered with respect to only one occasion when North American's wishes on a particular matter appear to have been contrary to the action of applicant's directors. In 1933, Hockenbeamer recommended the regular $.50 per share common stock dividend for the third quarter, but the directors voted to reduce the dividend to $.37½ because of a decreased trend in earnings. Black and Miller, who were in New York at the time, wired McKee, one of the local directors, and Dame called Hockenbeamer by long distance telephone to ask that the matter be reconsidered, if possible. Although the matter was not reconsidered, the record does not reveal that any further attempt was made to get such reconsideration. In the fall of 1936 Black recommended the restoration of the $.50 per share dividend. He testified that the earnings justified the restoration and denied that North American requested the action.

Conclusions with Respect to the Application under Sections 3(a)(1) and (2)—On the basis of the record before us, we find that applicant and all of its subsidiary companies are predominantly intra-state in character and carry on their business in California, the State in which each of them is organized, and that applicant is predominantly a public utility company whose operations as such do not extend beyond the State of California. Since we make no finding that the exemption of applicant from regulation under the Act as a holding company will be detrimental to the public interest or the interest of

investors or consumers, the application under Sections 3(a)(1) and (2) will be granted.

Conclusions with Respect to the Application under Section 2(a)(8)—We hold that the application under Section 2(a)(8) cannot be granted. There is almost no dispute as to the facts in the case as they are set forth in the trial examiner's report and in the briefs of both counsel. The point of issue with respect to the application under Section 2(a)(8) is rather one of statutory interpretation and in this respect we cannot agree with the conclusions reached by the trial examiner. Our reasons for this decision are as follows:

First, it is clear that the application herein cannot be granted unless we can find that applicant has sustained the burden of demonstrating that its management and policies are not subject to the controlling influence of North American.[16] We do not understand applicant to dispute this.

Second, it seems apparent from a reading of Section 2(a)(8) that by the use of the term "controlling influence," Congress meant something less in the form of influence on the management or poli-

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(16) The Detroit Edison Company v. Securities and Exchange Commission, 119 F. (2d) 730, 739 (C.C.A. 6th, 1941); The Detroit Edison Company, 7 S.E.C. 968 (1940); Paul Smith's Electric Light and Power and Railroad Company, 9 S.E.C. —— (1941), Holding Company Act Release No. 2854; American Gas and Electric Company, 9 S.E.C. —— (1941), Holding Company Act Release No. 2749.

cies of a company than "control" of such company. We have so held in a long line of cases.[17]

Third, to prove an absence of control or controlling influence, the applicant must do more than show that the holding company has not actively interfered with the local management in the past, for, as we understand the language of Section 2(a)(8), "control" includes the power to control, and "subject to a controlling influence" includes susceptibility to domination. Rochester Telephone Corporation v. United States, 307 U. S. 125 (1939); The Hartford Gas Company, 8 S.E.C. —— (1941), Holding Company Act Release No. 2613; The Detroit Edison Company, 7 S.E.C. 968 (1940). In the latter case we said (7 S.E.C. at 969):

"But whether the holding company has exercised control or effectively exerted influence is, upon application such as this, material only insofar as such circumstances may evidence the existence in the holding company of the ultimate directory power. Inaction on the part of a holding company does not necessarily negate the existence of control or controlling influences. It may only evidence satisfaction with the manner in which a subsidiary is being operated. A subsidiary company, moreover, does not cease to be such merely because it has been given the opportunity to build up an able and self-contained management. The problem is one of fundamentals and not superficialities for, as we under-

(17) See, e. g., H. M. Byllesby & Company, 6 S.E.C. 639 (1940); American Gas and Electric Company, supra.

stand the statutory language, 'control' embraces the power to control and 'subject to a controlling influence' includes susceptibility to domination (Rochester Telephone Corporation v. United States, supra). Consequently, our inquiry must look not merely to the personalities of the managers but primarily to the factors underlying the existence and continuation of the management."

In the Hartford Gas case, we said (Holding Company Act Release No. 2613 at p. 8):

"To satisfy condition (iii) the applicant must show that nothing in the course of relationships between the specified holding company and itself would suffice to make its management or policies 'subject to a controlling influence, directly or indirectly by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed' in the Act 'upon subsidiary companies of holding companies.' The phrase 'subject to', which we have emphasized, clearly does not imply continuous exertion of controlling influence by the holding company over the operating company. Thus we have pointed out that even where there is complete inaction on the part of the holding company, that fact, in itself, 'does not necessarily negate the existence of control or controlling influences'. The Detroit Edison Company, 7 S.E.C. 968 (1940)."

The opinion of the Circuit Court of Appeals for the Sixth Circuit in The Detroit Edison Company v. Securities and Exchange Commission, 119 F. (2d) 730, is of particular relevance and importance, for the issue in that case is precisely the same as that involved here and the facts are strikingly similar. It is interesting to note that Freeman testified in the hearing on the present application that The Detroit Edison Company and the applicant were the only companies of which North American had ever owned as much as 17% of the voting securities whose policies and management it had not admittedly controlled.

The facts of the Detroit Edison case are as follows: The Detroit Edison Company filed an application with this Commission for an order declaring it not to be a subsidiary of North American, which owned 19.28% of its voting stock, and of the United Light and Power Company, which owned 20.27% of its voting stock. The record revealed a close historical relationship between Detroit Edison and North American and showed that many of the officers and directors on Detroit Edison's board had had some past relationship with North American. It also appeared, however, that Detroit Edison was a strong, successful, and well-managed institution, and that its executive officers devoted all their time to the affairs of the company and at the time of the hearing had no official connection with North American. With respect to United Light and Power Company, the record showed that on numerous occasions its requests for representation on the De-

troit Edison board had been refused and that it had made several unsuccessful attempts to force recognition by attempting to break a quorum. We held that Detroit Edison had failed to sustain its burden of proof and that the record did not justify an order declaring it not to be a subsidiary of North American; with respect to its relationship to United Light and Power Company, we held that Detroit Edison had demonstrated that it was not subject to a controlling influence and, in that respect, we granted its application.[18]

Detroit Edison appealed to the Circuit Court of Appeals for the Sixth Circuit from that portion of our order denying its application. In affirming our order, the Court issued a carefully reasoned opinion discussing the meaning of Section 2(a)(8). This opinion merits quotation at length. Speaking through Judge Hamilton, the Court said:[19]

"At the time of the enactment of the present statute, it was recognized by the Congress that the holding company was the most effective device theretofore used for combining, under single control and management, the properties of two or more hitherto independent corporations and it is also recognized that such companies were largely exempt from state regulation, because in many cases, they extended their activities beyond the jurisdiction of any one state. It also recognized the separation of ownership of property represented by securities emitted

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(18) 7 S.E.C. 968 (1940).

(19) 119 F. (2d) 730, 738-739.

by corporations or trustees, from any direct accountability whatever for its prudent and efficient management. It also recognized that underlying public utility corporations were frequently controlled through pyramided corporate structures, the top corporation often having but a small investment in the capital structure of the underlying operating company, but through control of directors was enabled to direct the use of the assets and earnings of subsidiaries.

"The Congress recognized the necessity in the public interest of the regulation of public utility holding companies and their subsidiaries, such regulation by the states, in its judgment being inadequate. It also found as a fact that internal and private control over the operation of the business of such enterprises, had in some cases resulted in serious loss to the holders of their securities, deterioration of their physical properties and a marked impairment of the ability of such institutions to perform their functions as public servants. (15 U.S.C.A. Sec. 79 [a], 49 Stat. 803); Electric Bond Company v. Commission, 303 U. S. 419, 442. It proposed to support, as far as possible, the form of such a company on one side and on the other to take precautionary measures to prevent abuses, and to this end it took under public supervision both the good and bad. *The present Act undertakes to bring within its ambit all subsidiaries subject to 'controling influence' of a parent. This phrase should be construed in the light of the purpose of the Act of which it is a part, and when understood in this*

setting and in the light of its ordinary signification, it means the act or process, or power of producing an effect which may be without apparent force or direct authority and is effective in checking or directing action, or exercising restraint or preventing free action. The phrase as here used, does not necessarily mean that those exercising controlling influence must be able to carry their point. A controlling influence may be effective without accomplishing its purpose fully.

"Corporate wealth has become so widely distributed that control over it has tended to become more and more remote from ownership. Ownership of corporate shares without appreciable corporate control and control of corporate wealth without appreciable ownership has become a natural phenomenon of our economic system. Seven major types of corporate control were extant when the present Act was passed and others may develop from the urge of individuals to avoid public regulation. Congress recognized this condition, and the present Act imposes a wide discretion in the Commission in determining what is 'controlling influence' of a parent over a subsidiary public utility. However, this part of the present Act has its guide post, which prevents the Commission from exercising arbitrary power in enforcing it.

"The types of control referred to are: (1) through complete ownership of capital stock, (2) a majority ownership, (3) through a legal device without majority ownership, such as pyramiding through

holding companies or a large issue of non-voting stock with a comparatively small issue of stock with voting rights, or voting trusts, (4) *minority control, which exists when comparatively few shares of corporate stock are in the hands of one group and the remainder widely scattered,* (5) management control, which exists where all the stock is so widely distributed that no stockholder takes sufficient interest in the affairs of the corporation to influence or control it, (6) proxy control through committees, (7) through interlocking corporate officers or directors.

"The evidence in the case at bar shows marked features and significant incidences of the latent power of the North American Company to exercise a controlling influence over the petitioner. Compare Pipeline Company v. Slattery, 302 U. S. 300, 307; United States v. Union Pacific Railroad, 226 U. S. 61, 96; Southern Pacific Company v. Bogert, 250 U. S. 483, 492; Hyams v. Calumet & Hecla Mining Company, 221 F. 529 (C.C.A. 6); Moulton v. Field, 179 F. 673 (C.C.A. 7); Rochester Telephone Corporation v. United States and Federal Communications Commission, 307 U. S. 125, 145." (Emphasis ours.)

Applicant contends that there are distinguishing features in this case which justify a contrary result to that reached in the Detroit Edison case. We cannot agree. It is true that the historical relationship between Detroit Edison and North American was closer than that between applicant and North American, but it is also true that in one very

important respect the facts in the record before us present an even stronger case against applicant than in the Detroit Edison case—here North American has no stock interest competing against it; whereas in the Detroit Edison case, United Light and Power Company held an even larger interest than did North American.[20]

We agree with the finding of the trial examiner that the record does not reveal any past attempts by North American to interfere affirmatively with the management or policies of PG&E. But we also think that it is clear that the reason for this non-interference has been North American's complete satisfaction with the local management and that its failure to interfere has been purposeful. Thus, Fogarty expressly testified that North American's present inactivity in the affairs of PG&E is due primarily to the fact that PG&E's business has enjoyed a normal growth and has progressed in a satisfactory manner.[21] Freeman testified that North

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(20) Cf. American Gas and Electric Company, 9 S.E.C. —— (1941), Holding Company Act Release No. 2749.

(21) Fogarty testified:

"Q. Would you say that the relationship which you have stated has existed between the North American Company and the applicant in the past was due primarily to the fact that applicant's business has enjoyed a normal growth and has progressed in a satisfactory manner?

A. Yes.

Q. You would not say, would you, Mr. Fogarty, that North American would not take a more active part in the affairs of the applicant in which it has

American's position with regard to PG&E is that North American's own interest is best served by

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an investment representing the market value of approximately $60-odd million, if conditions changed in such a manner that earnings were materially decreased and its ability to pay dividends on its common stock seriously threatened?

A. I don't think a drop in earnings of the Pacific Gas and Electric Company, or a change in its dividends, would be warrant for taking any active part in its management. If some conditions were to develop which were the result of improper or incompetent management, it would be an entirely different situation.

Q. If a situation arose in the affairs of the applicant which led you to the conclusion that the applicant would be benefited by the North American Company exerting a controlling influence over its affairs, would you take such steps as in your opinion were necessary to result in the exercise of such controlling influence?

A. Well, we would submit those views to the management and directors, and whether or not any action that would be based on those views would be taken would depend entirely upon the acquiescence and support of the management and directors of the company.

Q. But if the managers and directors of the company differed—if there arose a sharp difference of opinion between you and the management and directors on a particular matter, what steps would you take to oust the management?

A. I don't know that under those circumstances we could take steps to oust the management. But whatever action we would take would depend upon the circumstances that gave rise to that. It is extremely difficult to answer such a hypothetical question."

PG&E being regarded as a California company under California management.[22]

There is evidence to justify a finding that even at the present time North American exerts a real influence in the affairs of PG&E, even though this influence is exerted in a negative way. But our decision herein is based primarily on our finding that North American has the power—if the oc-

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(22) Freeman testified:

"Q. Well, why does the North American Company deem it advisable, if such it does, to not exercise the same supervision over the affairs of the applicant as is exercised over the affairs of its subsidiaries?

A. In the first place, the Pacific Gas & Electric Company has always been regarded as peculiarly a California company, and our desire has been to see them have as strong and representative a local Board as they possibly could have. It would not be practicable to induce representative men to serve on a Board of that kind if they thought their actions were going to be subject in any way to the direction or veto of a company three thousand miles away. It would affect their public relations. It is a situation in which our interest in the company is best served by that company being regarded as a California company, under California management.

Q. Then, would you say that your failure to exercise control of the applicant, or controlling influence over its management and policies, was due entirely to a feeling on the part of the North American Company that such a control or controlling influence was not desirable, or not to the best interests of it?

A. I would say that it was not desirable from the viewpoint that it would not be to our best interest as stockholders."

casion arises and if it so desires—to make its influence felt in a substantial and affirmative manner.[23]

We have found that North American owns 32.89% of applicant's common stock, which represents 17.71% of applicant's voting securities. This interest is valued on North American's books at a figure in excess of $63,000,000, and the dividends received on this stock represent from 20 to 25% of North American's corporate gross income. It is clear, therefore, that North American's stake in PG&E is of very substantial importance to it and is well worth protecting.

The next largest stockholder to North American owns less than 2% of applicant's voting securities and the remainder of these securities is widely scattered. It is apparent that if a vital and substantial conflict arose between applicant and North American and matters came to the point of a proxy fight, the holdings of North American represent a tremendous advantage in any such fight. Counsel have argued as to the possible outcome of such a proxy fight. We need not speculate here as to whether North American's 17.71% of voting power, plus the votes it could attract, would be offset by the voting

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(23) The fact that there is a real possibility of North American domination inherent in its concentrated stockholders was apparently recognized by Chickering and some of the other directors of PG&E at the time of the Western Power deal. See Chickering's testimony quoted at n. 6, supra.

power which the local management could attract.[24] It cannot be denied that, in any event, North American's holdings would make it a formidable opponent. And the mere fact that there is a strong possibility that North American could prevail would, in itself, be a potent tool in influencing the management to give heed to North American's wishes.

There are many other respects in which North American's stockholdings confer upon it great power in the affairs of PG&E. First, so long as North American is satisfied with the present management, North American's voting power and the proxy machinery in the hands of the management make it virtually impossible for any other interest or group of interests to elect a majority of the directors. Second, North American's votes have represented 24 to 30% of the votes cast at stockholders' meetings and, by virtue of its stockholdings, North American had the power to break a quorum at all but two stockholders' meetings since it be-

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(24) Counsel for the applicant has argued that the native pride of Californians would rally California stockholders round the local management in any proxy fight. Even assuming this to be so, we still note that 52.1% of voting power is held by persons outside California and that most of these holdings are in and around New York and New Jersey. Moreover, we think that applicant's assumption that the local management would constitute a unanimous bloc on the same side of any conflict is of doubtful validity. And if there were any split in the local management, it is certainly reasonable to suppose that each group would be able to recruit its share of California stockholders.

came applicant's largest stockholder (see n. 11, supra); if it had chosen to do so, no business could have been transacted at such meetings. Third, the ownership of virtually 1/3 of applicant's common stock gives North American an effective veto power over any corporate action requiring the consent of 2/3 of each class of stock—e. g., mergers and consolidations.[25]

It is wholly untrue to characterize North American's relationship to PG&E as merely that of a stockholder holding an investment interest. It now has two of its representatives on PG&E's board of directors, and by cumulating its votes it could elect at least three directors. Moreover, under the agreement made at the time of the Western Power Deal, it could at any time have a representative elected to applicant's executive committee. Against the background of the other facts we have discussed, the fact that North American has been given the "right" to such representation on applicant's board of directors and executive committee is, we think, of material signficance.[26] We find some significance,

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(25) See Deering's Civil Code of California (1937), Ch. XIII.

(26) Fogarty's testimony in this respect is highly illuminating. He testified:

"Q. If your holdings were considerably smaller, it is very possible that you would not be entitled to two members or three representatives on the applicant's Board. You might not even have any representation on the applicant's Board, that is true, is it not?

A. Yes, that is true.

Q. Then, in that sense, at any rate, you

too, in the frequent and detailed reports of every phase of applicant's operations sent by applicant to North American (see pp. 15-16, supra); no such reports are sent to any other stockholder.

Nor can we disregard the fact that applicant's most important executive officer, Black, its president, was, for eight years just prior to his appointment, a senior executive of North American. From February 1927 to June 1930 Black's primary duty as vice president of North American was to exercise holding company supervision over the activities of the subsidiaries of Western Power Corporation. He conducted the negotiations for North American in which Western Power was transferred to PG&E and as a result of which North American acquired its interest in PG&E. For five years, from 1930 to 1935, Black was the individual in the North American organization who, more than any other one person, kept advised as to applicant's business and followed applicant's affairs in the light of North Amer-

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would not be in a position to exercise the controlling influence over applicant's affairs that you can exercise in view of the fact that you have very large holdings.

A. The difference is that the officer of the North American Company being a director of the Pacific Gas & Electric Company has a voice in its affairs as a director, whereas a small stockholder, not being a director, would not be in that position, and naturally the affairs of the company being managed by the Board and two officers of the North American Company being directors and participating in that capacity as directors are, in a different position from a small stockholder who is not a director."

ican's interest. It is also significant that since Black became president of PG&E, no effort has been made by North American to have representation on the executive committee, and no one in North American's management has followed applicant's affairs as closely as he did. It is wholly unreal to suppose that Black would be uninfluenced by these circumstances and, in his dealings with North American, would treat it as merely a large stockholder of PG&E. As we said in Panhandle Eastern Pipe Line Company, 9 S.E.C.—(1941), Holding Company Act Release No. 2778, at p. 12:

> "We cannot be asked to shut our eyes to 'actualities in . . . intercorporate relationships' in determining the existence of control or controlling influence; Rochester Telephone Corp. v. United States et al., 307 U. S. 125 (1939); nor can we be expected to ignore the fact that 'historical ties and associations often serve as a substitute for, or a potent auxiliary of, the more obvious modes of control.' American Gas and Electric Company, 9 S.E.C.—(1941), Holding Company Act Release 2749."

It is significant, too, that although the record covers the entire history of the relationship of PG&E and North American, the only evidence offered by applicant to show an affirmative conflict between the local board and North American was the testimony to the effect that the board did not reconsider the dividend reduction in 1933 following Black's telegram and Dame's telephone call. It does not appear that North American made any

further attempt to obtain a reconsideration of this matter, and we do not think that the facts in the record indicate that the incident was the subject of any serious conflict between the local board and North American. Moreover, we note that in the fall of 1936, Black recommended the restoration of the old dividend and that his recommendation was followed. We do not think, therefore, that the evidence offered with respect to this incident is entitled to any great weight.

In view of the foregoing, we hold that applicant has not sustained the burden of proving that it is not "subject to the controlling influence" of North American within the meaning of Section 2(a)(8).[27]

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(27) Counsel for applicant in his argument made the statement that, if a case for granting the application is not shown here, then it is impossible to prove a case in which the application should be granted. Cases in which we have granted applications under Sections 2(a) (7) and 2(a) (8), however, show that the burden can be met when facts exist to negative the existence of susceptibility to domination. See Allied Chemical & Dye Corporation, 5 S.E.C. 151 (1939) (where applicant owned slightly more than 10% of voting securities of alleged subsidiary but had no representation on its board, and where United Light and Power Company owned more than 51% of voting securities and actually controlled the alleged subsidiary); The Detroit Edison Company, 7 S.E.C. 968 (1940) (where application granted with respect to United Light and Power Company which owned 20.27% of Detroit Edison's voting securities while North American owned only 19.28%; the record showed that numerous attempts by United Light and Power Company to obtain representation on the board and

The only question remaining is whether North American's influence in applicant's affairs is such "as to make it necessary or appropriate in the public interest or for the protection of investors or consumers" that applicant be subject to the obligations, duties, and liabilities imposed by the Act on subsidiary companies of holding companies. Applicant is a company with stated assets of almost 800,000,000 serving in excess of $1,500,000 customers; its securities are listed and traded on national securities exchanges and are owned by investors throughout the country. In discussing the significance of the quoted phrase in Section 2(a)(8) in The Detroit Edison Company v. Securities and Exchange Commission, 119 F. (2d) 730 (C.C.A. 6th, 1941), the Court said (119 F. (2d), at p. 739):

> "The phrase 'public interest' as used means that the public has some pecuniary interest or an interest by which legal rights or liabilities of its individual members are affected by the operation of the utility. The phrase is not to be construed as requiring the Commission to find that the conduct of the applicant's busi-

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a voice in the management had failed); Panhandle Eastern Pipe Line Company, 9 S.E.C.—(1941), Holding Company Act Release No. 2778 (applicant held not to be a subsidiary of Missouri-Kansas Pipe Line Company, despite ownership of 42% of applicant's common stock). See also Beebee Island Corporation, 7 S.E.C. 991 (1940); Lehigh Power Securities Corporation, 5 S.E.C. 143 (1939); West Penn Railways Company, 2 S.E.C. 992 (1937); Chicago District Electric Generating Corporation, 2 S.E.C. 10 (1937).

ness has or will affect the public adversely. The statute contemplates action prospectively. It is a preventive measure intended to regulate action before the interests of those concerned are adversely affected. The prime factors in determining statutory exemption are the size and extent of the company involved, the inter-company relationship, the distribution of its securities and the opportunity presented because of the relationship between the parent and subsidiary for excessive charges for services, construction work, equipment and materials, and the transactions entered into in which evil may result, because of the absence of arms' length bargaining or restraint of free and independent competition."

On the basis of the foregoing, we hold that applicant has not demonstrated that its management and policies are not subject to the controlling influence of North American, so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed by the Act upon subsidiary companies of holding companies.

We desire to emphasize that our holding in this respect is not to be taken to mean that any stigma is cast upon applicant or that we think that applicant is not properly regarded as a California corporation. Nor do we mean to indicate that the influence of North American necessarily is or will be improperly exercised. The only question which we

have decided is that, in the circumstance of this case where the statute presumptively requires that PG&E be regulated as a subsidiary of North American, the facts in the record before us do not demonstrate that PG&E is entitled to be excepted from the general requirement of regulation as a subsidiary of a registered holding company.

An appropriate order will issue denying the application.

By the Commission (Chairman Eicher, Commissioners Healy, Pike, and Purcell), Commissioner Burke not participating.

[Seal] FRANCIS P. BRASSOR,
Secretary.

[Endorsed]: Filed October 24, 1941. Paul P. O'Brien, Clerk.

United States of America

Before the
Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 10th day of September A. D., 1941.

File No. 31-55

Public Utility Holding Company Act of 1935—Sections 3(a)(1), 3(a)(2) and 2(a)(8).

In the Matter of

PACIFIC GAS AND ELECTRIC COMPANY, et al.

ORDER DISMISSING APPLICATION IN PART, GRANTING APPLICATION IN PART, AND DENYING APPLICATION IN PART

Pacific Gas and Electric Company and Great Western Power Company of California having applied under Sections 3(a)(1) and 3(a)(2) of the Public Utility Holding Company Act of 1935 for orders exempting both companies from regulation under the said Act as holding companies, and having applied under Section 2(a)(8) of the Public Utility Holding Company Act of 1935 for orders declaring that neither company is a subsidiary of The North American Company;

Notice and opportunity for hearing on said application having been duly given; a hearing having

been held on said application; the trial examiner's report having been filed; exceptions to such trial examiner's report and supporting briefs having been submitted; oral argument having been heard; and the Commission having this day issued its Findings and Opinion herein;

It Is Ordered, on the basis of the said Findings and Opinion:

(1) That the application of Great Western Power Company of California be and it hereby is dismissed;

(2) That the application of Pacific Gas and Electric Company, insofar as it seeks an order under Sections 3(a)(1) and 3(a)(2) of the Public Utility Holding Company Act of 1935 exempting it from regulation under the said Act as a holding company, be and it hereby is granted; and

(3) That in all other respects the application of Pacific Gas and Electric Company be and it hereby is denied.

By the Commission.

[Seal] FRANCIS P. BRASSOR,
Secretary.

[Endorsed]: Filed October 24, 1941. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO SUPPLEMENTAL RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred fifty-three (153) pages, numbered from and including 1779 to and including 1933, to be full, true and correct copies of (1) Report and Findings of Fact by the Trial Examiner, (2) Findings and Opinion of the Securities and Exchange Commission, and (3) Order of the Securities and Exchange Commission dismissing application in part, etc., of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the petitioner, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and seal of the said United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 21st day of March, 1944.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 22, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 1936] At a Stated Term, to wit: The October Term A. D. 1944, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City of Los Angeles, in the State of California, on Monday the ninth day of October in the year of our Lord one thousand nine hundred and forty-four.

Present: Honorable William Denman, Circuit Judge, Presiding; Honorable Albert Lee Stephens, Circuit Judge.

No. 9918

PACIFIC GAS AND ELECTRIC COMPANY, Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION, Respondent

ORDER

Upon oral motion of Mr. Herman Phleger, counsel for petitioner, and good cause therefor appearing, the further order heretofore made and entered by this Court on February 23, 1944, reading as follows:

> "It is further Ordered that the order of the Securities and Exchange Commission of September 10, 1941, denying the application of said Pacific Gas and Electric Company for an order declaring it not to be a subsidiary of The North American Company, be, and hereby is stayed until after the Supreme Court of the United States disposes of the petition for certiorari to be hereafter made by said petitioner, provided however, that said petition for writ of certiorari shall be filed in the office of the clerk of the Supreme Court of the United States on or before April 10, 1944, and the decree of this Court be, and hereby is stayed accordingly."

is hereby clarified to read as follows:

> "It is Further Ordered that the order of the Securities and Exchange Commission of September 10, 1941, denying the application of said Pacific Gas and Electric Company for an order declaring it not to be a subsidiary of The North American Company be, and hereby is stayed until after the Supreme Court of the

United States disposes of the petition for certiorari to be hereafter made by said petitioner (that is to say until such petition be denied, or, if the same be granted, until final decree of said Supreme Court), provided however, that said petition for writ of certio- [fol. 1937] rari shall be filed in the office of the Clerk of the Supreme Court of the United States on or before April 10, 1944, and the decree of this Court be, and hereby is stayed accordingly."

and said order of this Court as hereby clarified is reaffirmed and the said order of said Commission is hereby stayed accordingly.

It is further ordered that this order be entered as of February 23, 1944.

I hereby certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this thirtieth day of October, 1944.

Paul P. O'Brien, Clerk, U. S. Circuit Court of Appeals, for the Ninth Circuit.

[Endorsed:] No. 9918. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Gas and Electric Company vs. Securities and Exchange Commission. Certified Copy of Order.